

THE 2  
WORKS  
OF THAT  
GRAVE and LEARNED  
LAWYER  
Judge Jenkins,  
Prisoner in *Newgate*.

UPON  
Divers STATUTES,  
Concerning, the *Liberty*, and  
*Freedom* of the Subject.

*With a perfect Table thereto annexed.*

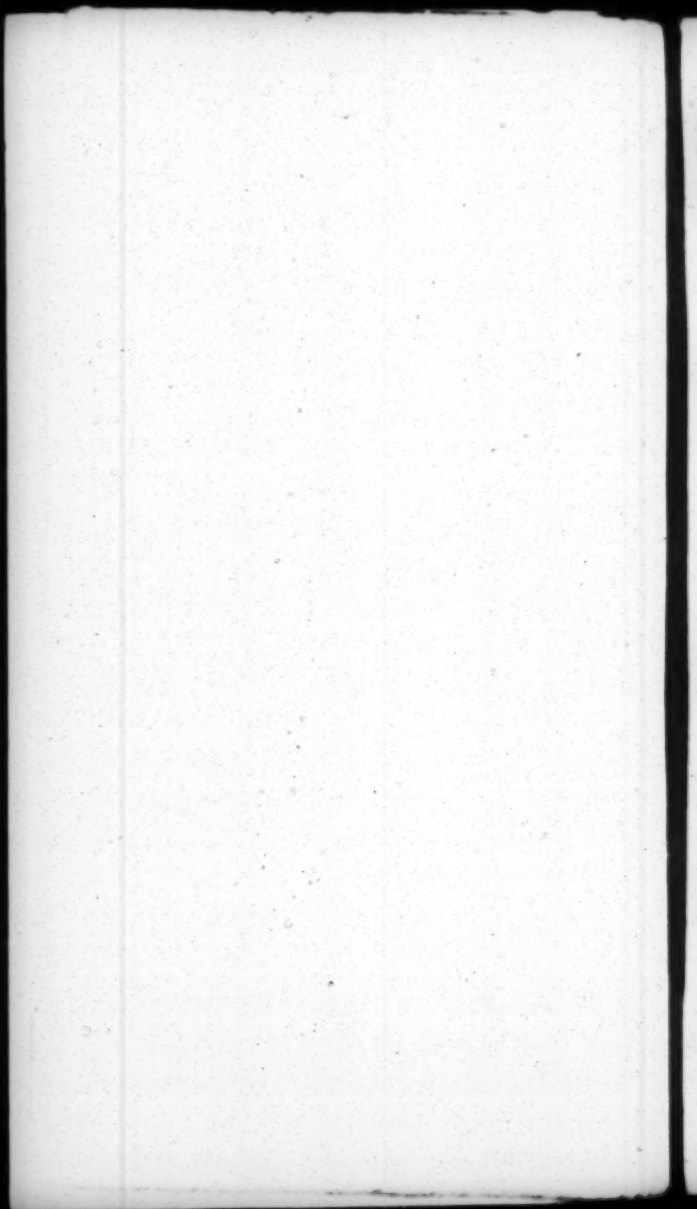
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*Plæbs sine Legibus.*

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L O N D O N,

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*The Law of the Land.*

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p. 54

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### Treason.

IN the Reign of Ed. 2. the *Spencers*, the Father and the Sonne to cover their Treason hatched in their hearts, invented this damnable and damned opinion, that Homage, and Oath of Allegiance, was more by reason of the Kings Crowne (that is his Politique Capacity) than by reason of his person: upon which opinion they infered three execrable and detestable Consequences.

First, if the King do not demean himselfe, by reason, in the right of his Crowne, his Leidges are bound by Oath to remove the King.

Secondly, seeing the King could not be reformed by suit of Law, that ought to be done *per asperum*, that is by force.

Thirdly, his Leidges be bound to Govern in aid of him, and in default of him. p. 9 70.

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The King assembles the Parliament by his Writ, Adjournes, Prorogues, and dissolves the Parliament, by the Law, at his pleasure. p. 57.

The Writ whereby the King assembled the two Houses, which is called the Writ of Summons, at all times, and at this Parliament used, and which is the warrant, ground, and foundation of their meeting, is for the Lords of the House of Peers, to Consult and Treat with the King (that is the *Parler*) of great Concernments, touching;

1. The King.
2. The defence of this Kingdome.
3. The defence of the Church of England.

p. 24. 34. p. 25. 81. 120, 121.

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Counsell there (*viz.*) in the Parliament, p. 15. 16. 115.

The Parliament is a Corporation composed of the King the head, and the Lords and Commons, the Subject body. p. 5. l. 22. p. 19. 20. 49. 50 80. 122. 142. 145. 146.

And it hath power over our Lives, Liberties, Lawes, and Goods. p. 118.

The Court of Parliament is onely in the House of Lords, where the King sits in person. p. 116. 122. 144.

The Office of the Lords, is to Counsell the King in time of Peace, and to defend him in time of War. p. 116. 142.

It belongs to the House of Lords, to reforme erroneous Iudgements given in the Kings Bench, to redresse the delays of Courts of Iustice, to receive all Petitions, to advise his Majesty with their Counsell, to have their Votes in Voting, or abrogating of Laws, and to propose for the Common good, what they conceive meet. p. 33.

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Briberies

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Because making of new, and abrogating of old Lawes, both induce Novelties: and because Bills in both Houses may passe, but by one or two voices, or very few, and perhaps of no Iudicious men (who oftentimes carry it by making the Major part, which involves the consent of all) therefore the Law makes the King assisted therein, by a great number of Grave, Learned, and Prudent men, the Judge of those Bills, whether they be necessary for the Publique Good, or no. *p.* 32, 33. 53. 57. 123.

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The styles of the Acts printed from 9. Hen. 3. to 1. Hen. 7. were either, the King Ordaines at his Parliament, &c. Or, the King Ordaineth by the advice of his Prelates and Barons,

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rons, and at the humble petition of the Commons &c.

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No Act of Parliament bindes the Subject, without the assent of the King. *p. 71. 72.*

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An Adjournment of the parliament makes no Session. *p. 137.*

There is no Session, till a prorogation, or dissolution of the Parliament. *p. 137.*

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man in case of Treason or Felony. p. 15. 1678.

Parliaments are as the times are ; if a turbulent Faction prevails, the Parliament are wicked, if the times be sober, modest, prudent, and not biassed, the Parliament are right, good, honourable, and good Medicines and Salves. p. 41. 42.

### *The present Parliament.*

**T**HIS Parliament beganne 3. *Novemb.* 1640. and in the beginning thereof the King acquitted the Ship-Money, Knighthood-Money, seven Courts of Justice, consented to a Triennial parliament, settled the Forrest bounds, tooke away the Clarke of the Market, of the Household, trusted the Houses with the Navy, passed an Act not to dissolve this Parliament without the Houses assent : No people in the world so free, if they could have been content with Lawes, Oathes, and Reason, and nothing more could, nor can bee devised to serve us, neither hath been in any time before. p. 39.

Notwithstanding all this (*Jan.* 10. 1641. ) the King was driven away from *London*, by frequent Tumults, and 2. thirds, and more of the Lords had deserted that House, for the same cause, and the greater part of the House of Commons, left that House also for the same

## The Table.

same reason: New men chosen in their places, against Law, by the pretended Warrant of a counterfeit Seale, and in the Kings name, against his consent, leavying War against Him, and seizing his Forts, Ports, Magazines, and Revenue, and converting them to his destruction the subversion of the Law, and Land, laying Taxes on the people never head of before in this Land, devoting new Oathes to oppose the Forces raised by the King, &c. p. 35.

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1. Against Common right; for thereby the parliament men will not pay their debts: And they

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3. Impossible, the Death of his Majesty (whom God long preserve, dissolving it necessarily.

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tryall of the Falcity of the Returne, is to bee  
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*The*

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That which will save this Land from destruction, is an Act of Oblivion, and his Majesties Gracious Generall pardon, the Souldiers their Arrears, and every man his own, and truth and peace established in this Land, and favourable regard had to the satisfaction of tender Consciences.

*God save the King.*



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To the Honourable  
Societies of *Graves Inne*,  
and of the rest of the Innes  
of Court, and to all the  
Professors of the  
LAW.

I Have now spent Forty five  
yeares in the Study of the Lawes  
of this Land, being my Profession,  
under, and by the conduct of which  
Lawes this Common-wealth hath  
flourished for some ages past in  
great splendor and happinesse (*Jam  
reges est ubi Troja fuit.*) To  
that and full body of this King-  
dome hath of late yeares fallen in-  
to an extreame sicknesse; it is  
truly said that the cause of the  
disease being knowne, the disease  
is easily cured. There is none of  
whom I hope, but doth heartily wish  
B the

the recovery of our common parent,  
 our native country ( *Moribus*  
*antiquis sicut res Britannica* )  
 I call God to witnesse that this dis-  
 course of mine hath no other end  
 then my wisher of the common  
 good : how farre I have been from  
 Ambition my life past, and your  
 owne knowledge of me, can abund-  
 dantly informe you : and many  
 you well know, that I ever de-  
 fied the Ship-money and Monop-  
 lies, and that in the beginning  
 this Parliament, for opposing the  
 excesses of one of the Bishops, I lay  
 under three Excommunications, and  
 the Examination of seventy seven  
 Articles in the high Commission  
 on Court. His sacred Majesty  
 ( God is my witnesse ) made me  
 Judge in the parts of Wales against  
 my will, and all the meanes I was  
 able to make ; and a patent for  
 place was sent me, for the which  
 have not paid one farthing, and  
 the place is of so inconsiderable



benefit that it is worth but 80. l. per Annum when paid, and it cost me every yeare I served twice as much out of my owne estate in the way of an ordinary and frugall expence. That which gave me comfort was, that I knew well that his Majesty was a just and a prudent Prince.

In the time of the Attorney-ships of Master Noy and the Lord Banks, they were pleased to make often use of me, and many references concerning suits at Court. Upon that occasion came to my knowledge; and as I shall answer to God upon my last account this is truth, that all or most of the references which I have seene in that kind (and I have seene many) were to this effect, that his Majesty would be informed by his Councell if the suits preferred were agreeable to the Lawes, and not inconvenient to his people, before he would passe them, (what could

( 4 )

a just and pious Prince doe more i)  
Gentlemen: you shall finde the cause  
and the Cure of the present great  
distemper in this discourse, and  
God prosper it in your hands,  
thoughts, and words, as the case  
deserves.

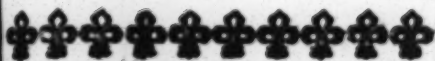
Hold to the Lawes, this great  
body recovers: forsake them, it  
will certainly perish. I have resol-  
ved to tender my selfe a Sacrifice  
for them as cheerefully, and I hope  
( by Gods assistance ) as constantly  
as old Eleazer did for the holy  
Lawes of his Nation.

Your Well-wisher

David Jenkins.

Now Prisoner in the Tower,

LEX



# LEX TERRÆ.



The Law of this Land hath three grounds: First, **Custom**. Secondly, **Judiciall Records**, Thirdly, **Laws of Parliament**.

The two latter are but declarations of the **Common-Law** and **Custom** of the Realme, touching **Royal Government**. And this Law of **Parliament** is a **Law fundamental**.

The Government of this Kingdome by a **Royal Sovereign**, hath been as ancient as History is, or the memoriall of any time; what power this **Sovereignty** alwaies had, and used in warre and peace in this Land, is the scope of this discourse; That **the** **law** so practised makes therein a **fundamentall Law**, and the **Common Law** of the Land is **common** **Ulage**, **Blondens Commentaries** 195. For the first of our Kings thence the Norman Conquest, the first **William**, second **William**, **Henry** the

The Kings  
Pre-ogative  
is a principall  
part of the common  
Law. *Com. Littl* 341.  
*27 Hen. 8. Stamford,*  
*Prat. fol. 1.*  
*2 Parimphie. fol. 496*  
*3 Parimphie. p. 84.*

first, **Stephen**, **Henry** the second, and **Richard** the first, the Customs of the Realme touching **Wapall** **G**overnment, were never questioned: The said Kings injoyed them in a full measure. In King **John**s time the Nobles and Commons of the Realme conceiving that the ancient Customes and Rights were violated, and thereupon pressing the said King to allow them in the seventeenth of King **John**, the said Liberties were by King **John** allowed, and by his Sonne **Henry** the third, after in the ninth year of his Reigne confirmed, and are called *Magna Charta*, and *Charta de Foresta*, declared four hundred twenty two years since by the said Charters.

Now rests to be considered, after the Subjects had obtained their Rights and Liberties, which were no other then their ancient Customs ( and the fundamentall Rights of the King as **Soveraigne** are no other.) How the Rights of **Soveraigne** continued in practise from **Henry** the thirds time untill this present Parliament of the third of November, 1640. for before **Henry** the third time, the **Soveraigne** had a very full Power:

Rex habet Potestatem & jurisdictionem super omnes qui in Regno suo sunt, ea quae sunt jurisdictionis & paucis ad nullum pertinent nisi ad Regiam dignitatem, habet etiam coercionem, ut Delinquentes puniat & coerceat. This proves where the supreme Power is.

Bracton.  
comp H. 3. l.  
4 cap. 24.  
S. 1.

A Delinquent is he who adheres to the Kings Enemies, Com. Sur. Lint. 261. This shewes who are Delinquents.

Omnis sub Rege, & ipse sub nullo nisi tantum Deo, non est inferior sibi Subiectis, non parem habet in Regno suo: This shewes where the supreme power is.

Soll. 5. Bracton  
ibid.

Rex non habet superiorem nisi Deum, satis habet ad penam quod Deum expectat ultorem. This shewes where the supreme power is.

Bracton. l. 5.  
Soll. 3. de  
delictis, cap.  
3 Bracton. l.  
3 cap. 7.

Treasons, Felonies, and other Pleas of the Crowne, are propriis causa Regis: This shewes the same power.

By these passages it doth appeare

what the Custome was for the power of **Soveraignty** before that time, the power of the Militia, of coining of Money, of making Leagues with forraigne Princes, the power of pardoning, of making of Officers, &c. All Kings had them, the said Powers have no beginning.

*Sexto Edw. 1. Com. Sur. Littl. 85.*  
 Lege Homage, every Subject owes to the King (*viz* ) Faith *de Membro, de vita, de terreno Honore*, the forme of the Oath, *inter vetera statuta* is set downe; We read of no such, or any Homage made to the two Houses, but frequently of such made by them.

*7 Ed. 1. Statute of Maje, fol. 42.*  
 It is declared by the Prelates, Earls, Barons, and Commonalty of the Realme, that it belongeth to the King and his Royall Segniory, straitly to defend force of Armour, and all other force against the Kings peace, at all times when it shall please him, and to punish them that shall doe contrary according to the Law and Usage of the Realme, and hereunto they are bound to ayd their Sovereigne Lord, at all seasons when need shall be. Here the supreme power in the time of Parliament, by both Houses is declared to belong to the King.

At

At the beginning of every Parliament, all Armes are, or ought to be forbidden to be borne in London, Westminster, or the Subburbs. This condemnes the multitudes comming to Westminster, and the Guards of armed men.

7. Ed. 1. 4.  
p. 171 in fine.  
14.

All who held by Knights service, and had twenty pounds *per annum*, were distraynable *ad Arma militaria facienda*: This agrees with the Records of ancient time, continued constantly in all Kings times, but at this Parliament 3. November, 1640. The King out of his grace, discharged this duty, which proves that the power of warr and preparation thereto, belongs not to the two Houses but only to the King.

1. Edw. 1. de.  
Militibus.

The two **Spencers** in Edw. 2. time hatched (to cover their Treason) this damnable and damned opinion (viz) That Ligeance was more by reason of the Kings politick capacity then of his person, upon which they inferred these execrable and detestable consequences. First, if the King demeaned not himselfe by reason in the right of his Crowne, his Lieges are bound by Oath to remove him: Secondly, seeing the King could not be removed by force of Law it was to

Edw. 3. C. 12  
vint  
C. 12 C. 12  
9. Joh. 1. 11

be done by force. Thirdly, that his Lieges be bound to governe in default of him.

All which tenets were condemned by two Parliaments, the one called *exilium Hugonis* in Ed. 2. times, the other by 1. Edw. 3. cap. 2. All which Articles against the **Spencers** are confirmed by this last Statute, the Articles are extant in the booke called *vetera Statuta*. The separation of the Kings person from his power, is the principall Article condemned, and yet all these three damnable, detestable, and execrable consequents, are the grounds whereupon this present time relies, and the principles whereupon the two houses found their cause.

The Villeine of a Lord, in the presence of the King cannot be seized; for the presence of the King is a protection for that time to him: This shewes what reverence the Law gives to the person of a King.

*Plowden*  
1901, 3. 2.  
27 ass. pl. 49

33 Ed. 3.  
274 de reg.  
203 F112.  
10 H. 7. 16

*Regis, sacro oleo uncti sunt capite spiritualis jurisdictionis*: But the two Houses were never held capable of that power.

*Rex est persona mixta cum sacerdote, habet Ecclesiasticam & spirituales jurisdictionem*: This shewes the Kings power in Ecclesiasticall Causes.

The



The Lands of the King is called in *Com. Bur.*  
*Law Patrimonium sacrum*: The Houses *Lasel Sett. 4.*  
 should not have meddled with that sa-  
 cred Patromony. 3 Ed. 3. 19

The King hath no Peere in his  
 Land, and cannot be judged? *Ergo*  
 the two Houses are not above him.

The Parliament 15. Ed. 3. was re-  
 pealed, for that is was against the  
 Kings Lawes and prerogative. 4 *parts*  
*instit. fol. 25.* This shewes cleerely  
 the Propositions sent to Newcastle,  
 ought not to have beene presented to  
 his Majesty, For that they are contra-  
 ry to the Lawes and his Prerogative.

The Lords and Commons cannot  
 assent in Parliament to any thing that  
 tends to the dis-inherison of the King  
 and his Crowne, to which they are  
 sworne: This condemnes the said  
 Propositions likewise. *4 parts, Cooke*  
*instit. fol. 14*  
*42. E. 3.*

To depose the King, to imprison  
 him untill he assent to certaine de-  
 mands, a warre to alter the Religi-  
 on established by Law, or any other  
 Law, or to remove Councillors, to  
 hold a Castle or Fort against the  
 King, are offences against that Law  
 declared to be treason by the resoluti-  
 ons herein after mentioned, by that  
 Law men are bound to ayd the King  
 when warre is levied against him in  
 his

Parliament  
 Rol. num. 7.  
*Reu & com.*  
*statute Par-*  
*liament.*

25 Ed. 3. cap. 5. his Realme. King in his Statute must be intended in his naturall body and person that only can dye; for to compass his death, and declare it by covert Act is declared thereby treason; to incounter in fight such as come to ayd the King in his warres, is treason.

Compassing of the Queens death, of the Kings Eldest Sonne, to coyne his mouey, to counterfeit his Great Seale, to levy Warre against him, to adhere to such as shall so doe, are declared by that Act to be high treason. This Statute cannot referre to the King in his politique capacity, but to his naturall, which is inseperable from the politick; for a body politick can have neither Wife, nor Childe, nor levy Warre, nor doe any Act but by the operation of the naturall body: A Corporation or body politick hath no soule or life, but is a fiction of the Law, and the Statute meant not fictitious persons, but the body naturall, conjoined with the politique, which are inseperable.

The clause in that Act, that no man should sue for grace, or pardon for any offence condemned or forfeiture given by that Act, was repealed by a subsequent Act in 21. R. 2 holden

21 Ed. 4. 14.  
R. 2. 11. 4th

den unreasonable, without example ;  
 and against the Law and custome of  
 the Parliament. This condemnes the  
 Proposition for disabling the King to  
 Pardon. *4 pars inslit. fol. 42.* The Act *4. P. in 1534*  
 of 11. R. 2. so much urged by the o- *fol. 42.*  
 ther side, was an Act to which the  
 King consented, and so a perfect Act :  
 yet Note the Army then about the  
 Towne : Note that that Law is 2-  
 against private persons, and by the 3.  
*cap. thereof,* the treasons there declared  
 are declared, to be new treasons made  
 by that Act, and not to be drawne to  
 example, it was abrogated 21. R. 2.  
 and revived by an usurper 1 H. 4. to  
 please the people, and by the tenth  
 chap. thereof enacts that nothing shall  
 be treason but what is declared by 25. *16. Ed. 1. cap.*  
 Ed. 3. *5. 16. R. 2.*

The Regality of the Crowne of *cap. 5. H. 4.*  
**England**, is immediately subject to  
 God and to none other. Plaine words,  
 shewing where the supream power  
 is.

The Commission of Array is in  
 force and no other Commission, *Rot.*  
*Parlm. 5. H. 4. numb. 24* an Act not  
 printed, this Act was repealed by 4.  
 and 5. P. & M. *cap. 2.* this repealed  
 by the Act of 1 *Jacobi*, and so it is  
 of force at this day, for the repealing.  
 Statute

Statute is repealed 4. *pars infinitus*, fol. 51. & 125. published thence this Parliament, by the desire of the house of Commons, their Order is printed in the last leafe of the commentaries upon *Magna Charta*.

A booke allowed by  
SIR NA. BENT  
called the  
reason of  
the War:  
fol. 65.

SIR Edward Cooke, by their party is holden for the Oracle of the Law, who wrote the said fourth part, in a calme and quiet time, and I may say, when there was no need to defend the authority of the Commission of Array.

For that objection, that that Commission leaves power to the Commissioners to tax men *secundum facultates*, and so make all mens estates Arbitrary: the answer is, that in levying of publicke aydes upon mens goods and estates, which are variable, and probably cannot be certainly known: by any but the owners, it is impossible to avoyd discretion in the assessments, for so it ever was, and ever will bee. By this appeares that the Votes of the two Houses against the Commission of Array, were against the Law.

H. 9.

2 H. 5

4. *pars infinit.*

45.

The death of the King dissolves the Parliament, if Kings should referre to the politick capacity it would continue after his death, 4 *pars infinit.* 45. which proves that the King cannot

not

not be said to be there when he is absent, as now he is: there is no *inter regnum* in the Kingdome the dissolution of the Parliament by his death, shewes that the beginning and end thereof refers to the naturall person of the King, and therefore he may lawfully refuse the Propositions.

2. *H. 5 Chap. 6.* to the King onely it belongs to make Leagues with Forraigne Princes: this shewes where the supream power is, and to whom the Militia belongs.

8. *H. 6. numb. 57. Rot. Parl. Cooks* *H. 6.*  
*4 pars inst. 25.* No priviledge of Parliament is grantable for treason, felony, or breach of the peace; if not to any one Member, not to two, not to ten, not to the major part, 19 *H. 6: 52.* The Law is the inheritance of the King and his people, by which they are ruled, King and people; And the people are by the Law bound to ayd the King, and the King hath an inheritance to hold Parliaments, and in the ayds granted by the Commonalty. If the major part of a Parliament commit treason, they must not be Judges of it, for no man or body, can be Judge in his own cause, and aswell as ten or any number may commit treason, the greater number may aswell.  
The

23 H. 6 11. The King by his Letters patent  
 27 Ed. 3 34. may constitute a County palatine and  
 grant Regall rights, this shewes where  
 the supream power is.

Ed. 4.

17. Ed. 4. Rot. Parl. numb. 39. No  
 privilege of Parliament is grantable  
 for treason, fellony, or breach of the  
 peace, if not for one, not for two, or  
 more, or a major part.

*Calvin's Case*  
 7. par. fol.  
 11, 12.

The same persons must not bee  
 Judge and party. A corporate body  
 can commit no treason, nor can trea-  
 son be committed against a corporate  
 body, 21. E. 4. 13. and 14. but the  
 persons of the men who make that  
 body may commit treason, and com-  
 mit it against the naturall person of  
 him who to some purposes is a body  
 corporate, but *quatenus corporato* no  
 treason can bee committed by or a-  
 gainst such a body; that body hath  
 no soule, no life, and subsists onely by  
 the fiction of the Law, and for that  
 reason the Law doth conclude as a-  
 foresaid; therefore the Statue of 25.  
 E. 3. must bee intended of the Kings  
 naturall person; conjoynd with the  
 politique which are inseparable, and  
 the Kings naturall person being at  
 Holmby, his politique is there also  
 and not at Westminster; for the poli-  
 tique and naturall make one body in-  
 divisible.

*Plow com.*  
 213.

parents If all the people of England should 19 Ed. 4. 48.  
 be and make the league made with a for- 22 Rd. 4.  
 when Prince, without the Kings con- *First justis-*  
 sent, the league holds & is not broken, *distina l p*  
 39. And therefore the representative body *placito.*  
 is inferiour to his Majesties.

of the The King may erect a Court of  
 ro, or Common pleas in what part of the  
 Kingdom he pleaseth by his letters  
 t be parents; can the two Houses do the  
 body like?

1 Ed. 5. fol. 2 It cannot be said 1 Ed. 5.  
 that the King doth wrong, declared 4 Ed. 4. 29.  
 by all the Judges and Serjeants at Law 5 Ed. 4. 29.  
 then there.

The reason is, nothing can be done  
 in this Common-wealth by the  
 Kings grant or any other act of his,  
 as to the Subjects persons, goods,  
 lands or liberties, but must be ac-  
 cording to established Lawes, which  
 the Judges are sworne to observe and  
 deliver betweene the King and his  
 people impartially to rich and poore,  
 high and low; and therefore the  
 Justices and the Ministers of Justice 2 Parliam. 158.  
 are to be questioned and punished if  
 the Lawes be violated: and no re-  
 flection to be made on the King. All  
 Counsellors and Judges for a yeere  
 and three moneths unill the tumults  
 began this Parliament: were all left

to the ordinary cause of Justice, what hath been done since is notorious.

**R. 3.**  
**1 R. 3. c. 7.**  
**15.**  
For great Causes and considerations an Act of Parliament was made for the surety of the said Kings person: if a Parliament were so tender of King *Rich. the 3.* the Houses have greater reason to care for the preservation of his Majesty.

**Hen. 7.**  
**11 H. 7. c. 1.**  
The Subjects are bound by their allegiance to serve the King for the time being, against every Rebellion, power and might, reared against him within this Land, that it is against all Lawes, reason and good conscience, if the King should happen to be vanquished that for the said deed and true duty and allegiance they should suffer in any thing, it is ordained they should not; and all Acts of proceſſe of Law hereafter to be made to the contrary are to be void; This Law is to be understood of the naturall Person of the King; for his politick capacity cannot be vanquished, nor war reared against it.

Relapsers are to have no benefit of this Act.

**11 H. 7. 30.**  
**4 H. 7. 18.**  
**Henry 8.**  
**7 H. 7. 14.**  
It is no Statute, if the King assents not to it, and he may dissent, this proves the negative voice.

The



The King hath full power in all causes to do justice to all men : this is affirmed of the King, and not of the two Houses. 24 H. 8. c. 19.  
25 H. 8. c. 28.

The Commons in Parliament acknowledge no superiour to the King under God, the House of Commons confesse the King to be above the representative body of the Realm.

Of good right and equity the whole and sole power of pardoning treasons, felonies, &c. belong to the King, as also to make all Justices of Oyer and Terminer, Judges, Justices of the peace, &c. This Law condemns the practice of both Houses at this time. 27 H. 8. c. 14.  
Note.

The Kings Royall Assent to any Act of Parliament signed with his hand, expressed in his Letters patents under the great Seale, and declared to the Lords and Commons, shall be as effectuell, as if he assented in his owne person ; a vaine Act if the King be virtually in the Houses. 33 H. 8. c. 19.  
21.

The King is the head of the Parliament, the Lords the principal members of the body, the Commons the inferiour members, and so the body is composed, therefore there is no more Parliament without a King, then there is a body without a head. Diet. 30. M.  
2. fo. 59. 60.

There

There is a Corporation by the  
 14 H.3. f. 3. Common-Law, as the King, Lords,  
 and Commons, are a Corporation in  
 Parliament, and therefore they are  
 no body without the King.

34 Ed. 3. 48.  
 1 Ed. 4. 2. The death of the King discharged  
 all mainprise to appeare in any Court  
 or to keepe the peace.

2 H. 4. 8.  
 1 H. 7. 10.  
 1 Ed. 5. 1. The death of the King disconti-  
 nues all Pleas by the Common-Law,  
 which agreeth not with the virtuall  
 power insisted upon now.

Ed. 6.  
 1 Ed. 6. c. 7. Writs are discontinued by the death  
 of the King; Patents of Judges,  
 Commission for Justices of the Peace,  
 Sheriffs, Escheators, determined  
 by his death: where is the virtuall  
 power?

1 Ed. 6. c. 3. All authority and jurisdiction spi-  
 rituall and temporall is derived from  
 the King, therefore none from the  
 Houses

3. 3 Ed. 6. c. 3.  
 2.  
 11 H. 7. c. 1.  
 Calvins  
 Case.  
 10 part.  
 Cooke.  
 1 Part in Hist.  
 69. His Majesties Subjects, according  
 to their bounden duties, ought to  
 serve the King in his warres, of this  
 side or beyond the Seas, beyond the  
 seas is to be understood for wages:  
 This proves the power of warres, and  
 preparation for warre to be in the  
 King.

5. 6 Ed. 6. c. 11. It is most necessary both for com-  
 mon policy and duty of the Subject,

to reſtraine all manner of ſhamefull  
 ſlanders againſt their King, which  
 when they be heard, cannot but be o-  
 ſible to his true and loving ſubjects,  
 upon whom dependeth the whole u-  
 nity and univerſall weale of the  
 Realme. This condemnes their conti-  
 nuing of the weekly Pamphlets, who  
 have beene ſo foule mouthed againſt  
 his Maieſty.

The puniſhment of all offenders  
 againſt the Lawes, belongs to the  
 King, and all jurisdictions do, and  
 of right ought to belong to the King.  
 This leaves all to his Maieſty.

All Commiſſions to levy men  
 for the warre, are awarded by the  
 King: The power of warre onely  
 belongs to the King.

It belongs to the King to defend  
 his people, and to provide Armes and  
 Force: No ſpeech of the two Hou-  
 ſes.

*Roy ad ſole gouvernement de ſes ſubjects.* 7. l. 1. 234.  
*Corps naturall le Roy & politique ſunt un* 247. 213.  
*corps.* That is, the king hath the ſole  
 government of his Subjects, the bo-  
 dy politick and the naturall body of  
 the King make one body, and not di-  
 vers, and are inſeperable and indivi-  
 ſible.

The body naturall and politique  
 make

*Plow. 934.*

*2430 113.*

*Calvins case*

*7. pars fol. 12*

make one body, and are not to be severed : Ligeance is due to the natural body, and is due by nature, Gods Law and Mans Law cannot be forfeited or renounced by any meanes, it is inseparable from the person.

*1 Eliz. esp. 1*  
*Caudries*  
*case. 9 pars*  
*fol. 1*

Every Member of the House of Commons, at every Parliament takes a corporall Oath : That the King is the supreme and onely Governour in all causes in all his Dominions, otherwise he is no Member of that House. The words of the Law are, in all causes, over all persons.

*41 Eliz. 3.*  
*pars imp. 2.*  
*fol. 6. 2*

The said Act of *1 Eliz.* is but declarative of the ancient Law, *Caudries Case, ibid.*

The Earle of *Essex*, and others, assembled multitudes of men to remove Councillors, adjudged Treason by all the Judges of *England*.

*39 Eliz. Hil.*  
*1 Lib. 1. ibid.*

To depose the King, or take him by force, to imprison him untill he hath yielded to certaine demands, adjudged Treason, and adjudged accordingly in the Lord Cobham's Case.

*39 Ed. 3. Bred*  
*case. f. 9. &*  
*16. By all*  
*the Judges*  
*of England,*  
*ibid. 10. Eliz.*  
*Plow. 316*

Arising to alter Religion established, or any Law, is treason; so for taking of the Kings Castles, Forts, Ports or Shipping, *Broke treason 24. 3. & 4. Philip and Mary, Dier, Snyfords Case concerning Scarborough.*

The

The Law makes not the servant greater then the Master, nor the subject greater then the King, for that were to subvert order and measure.

The Law is not knowne but by Usage, and Usage proves the Law, and how Usage hath been is notoriously knowne.

10 Eli<sup>z</sup>.  
Plow 319

The King is our onely rightfull and lawfull Leige Lord and Sovereigne, we doe upon the knees of our hearts aduize constant Faith, Loyalty, and Obedience to the King and his Royall progeny, in this high Court of Parliament, where all the body of the Realme is either in person, or by representation: We doe acknowledge that the true and sincere Religion of the Church is continued and established by the King. And doe recognize, as we are bound by the Law of God and Man, the Realme of England, and the Imperiall crowne thereof doth belong to him by inherrent birth-right, and lawfull and undoubted succession, and submit our selves and our posterities for ever, untill the last drop of our blood be spent, to his rule, and beseech the King to accept the same as the first fruits of our Loyalty and faith to his Majesty and his posterity for ever; and for that this Act is

K. James,  
1 Jac. cap. 1  
9 Ed 4 fol 8

not compleat nor perfect without his Majesties assent, the same is humbly desired. This proves that the Houses are not above the King; that Kings have not their titles to the Crown by the two Houses, but by inherent birth right, and that there can be no Statute without his expresse assent, and destroys the Chimera of the Kings virtuall being in the Houses.

To promise obedience to the Pope or any other State, Prince or Potentate, other then the King, his heires and successors, is treason; and therefore those persons who call the houses the Estates offend this Law.

Such Bills as his Majesty is bound in conscience and justice to passe, are no Law without his assent.

To designe the ruine of the King person, or of Monarchy, is a monstrous and injurious charge.

*Ubi lex non distinguit, non est distinguendum*, all the aforesaid Acts and Lawes do evidently prove the Militia to belong to the King: that the King is not virtually in the two Houses; that the King is not considerable separately in relation to his political capacity: that the King is not a person trusted with a power, but that it is his inherent birth-right from God, Nature,

3 L. c. cap. 4.  
23 Eliz. c. 1.

R. Charles  
Collection  
of Ordinances, fol. 29.  
1 part ib fol.  
7. 8.

ibid. fol. 865.

Nature, and Law, and that he hath not  
his power from the people : These  
Lawes have none of those distinctions  
of naturall and politicke, *abstractum*  
& *concretum*, power and person : in  
*Cæsar's* time this Island had Kings, and  
ever since, which is almost 17 hundred  
yeares agoe.

No King can be named, in any  
time, made in this Kingdome by the  
people ; A Parliament never made  
King, for they were Kings before :  
the Parliaments are summoned by  
the Kings Writs, which for Knights,  
Citizens, and Burgesles begins thus :  
*vir.*

*Rex vic. Wilts. Saltem. Quia*  
*Nos de avisamento & assensu*  
*consilii nri, pro quibus. arduis*  
*& urgentib. negotiis nos statum*  
*& defensionem Regni nri. Ang.*  
*& Eccles. Anglie concernenti-*  
*bus quoddam Parliamentum*  
*trium, apud B. tener. ordinavimus*  
*& ibid. cum Prelatis Magnatib.*  
*& proceribus dicti Regni nri.*  
*Colloquium habere & i-actatum,*  
*sibi precipimus firmiter injungen-*  
*do quod facta Proclamatione in*  
*C* *prox.*

apud Inst.  
241.

prox. Comitatu tuo post receptionem ejusd. Brevis, duos Milites gladiis cinctos, &c. eligi facias ad faciendum & consentiendum hiis que tunc ibidem de Communi Concilio vero. Angl. faventi Deo contigerit ordinari super Negotiis ante dictis, ita quod pro defectu potestatis hujusmodi seu propter improvidam electionem Milium Civium, & burgensium predicta negotia tua, infecta non remanerent.

apud Inst.  
fol. 3. & 4

The King is *Principium*, caput & fons of his Parliament, the body makes not the head, nor that which is posterior that which is prior, *consilium* non est *Preceptum*, *consilium* non sunt *Preceptum*, for Counsell to compell a consent hath not been heard of to this time in any age, and the House of Commons, by the Writ, are not called *ad consilium*; the Writs to the twelve Judges, Kings Counsel, twelve Masters of the Chancery are *consilium* *provisuri*, and so of the Peeres. The Writs for the Commality, *Ad faciendum & consentiendum*: Which shew what power the representative body



hath, they have not power to give an Oath, neither doe they claime it.

The King at all times, when there is no Parliament, and in Parliament is assisted with the advice of the Judges of the Law, 12 in number, for England at least hath two Sergeants who are fewell; an Attorney and Solicitor, twelve Masters of the Chancery, his Councell of State consisting of some great Prelates, and other great Personages, versed in State affaires, when they are fewest to the number of twelve. All these persons are alwaies of great substance, which is not preserved, but by the keeping of the Law; The Prelates versed in divine Law, the other Grandees in affaires of State, and managery of Government; The Judges, Kings Sergeants, Attorney, Solicitor, and Masters of the Chancery versed in the Law and Customes of the Realme: All sworne to serve the King and his people justly and truly; the King is also sworne to observe the Lawes, and the Judges have in their Oath a clause, that they shall doe common right to the Kings people, according to the established Lawes, notwithstanding any command of the King to the contrary, under the Great Seale

The Oath of the Justices 18 of E. 3 among Statutes of that yeare.

or otherwise, the people are safe by the Lawes in force without any new: The Law finding the Kings of this Realme assisted with so many great men of Conscience, Honour and skill in the rule of Common-wealth, knowledge of the Lawes, and bound by the high and holy bond of an Oath upon the Evangelists, settles among other powers upon the King, a power to refuse any Bill agreed upon by both Houses, and power to pardon all offences, to passe any Grants in his Minority, (there are many great persons living hold many a thousand pounds a yeare by patents from *Edward* the sixth, passed when he was but ten yeares of age) not to be bound to any Law to his prejudice, whereby he doth not binde himselfe, power of war and peace, coyning of Mony, making all Officers, &c. The Law, for the reasons aforesaid, hath approved these powers to be unquestionable in the King, and all Kings have enjoyed them till 3 Nov. 1640.

It will be said notwithstanding all this sence about the Lawes, the Lawes have been violated, and therefore the said powers must not hold, the two Houses will remedy this.

The answer to this is evident:  
There

There is no time past, nor time present, nor will there be time to come, so long as men manage the Law; but the Lawes will be broken more or lesse, as appears by the story of every age. All the pretended violations of this time were remedied by Acts to which the King consented before his departure 10. *Jan.* 1641. being then driven away by Tumults: And the Houses for a yeare and almost three Moneths, from 3 *Nov.* 1640. to 10 *Jan.* 1641. as aforesaid, being a yeare and almost three Moneths, had time and liberty to question all those persons who are either causes or instruments of the violation of any of the Lawes.

Examine how both Houses remedied them in former times. First, touching Religion, what hath been done this way? Both Houses in *Henry* the eighths time tendred to him a Bill to be passed called commonly the Bill of the six Articles, this was conceived by them to be a just and a necessary Bill: Had not *Henry* the eight done well to have refused the passing of this Bill? Both Houses tendred a Bill to him to take the reading of the Scriptures from most of the Laity: Had not King *Henry* the

eight deserved much praise to reject this Bill? In *Queene Maries* time both Houses exhibited a Bill to her to introduce the Popes power, and the Roman Religion; had not *Queene Mary* done well to have refused this Bill? Many such instances may be given, The ~~two Houses~~ now at *Westminster* I am sure will not deny but the refusall of such Bills have beene just, the King being assisted as aforesaid, and why not so in these times?

For the Civill Government, what a Bill did both Houses present to *Richard* the third, to make good his Title to the Crowne, had it not beene great honour to him to have rejected it? What Bills were exhibited to *Henry* the eight by both Houses for battardizing of his Daughter *Elizabeth*, a *Queene* of renowned memory, to settle the Crowne of this Realme, for default of Issue of his body, upon such persons as he should declare by his Letters Patents, or his last Will, and many more of the like? had not this refusall of passing such Bills magnified his vertue, and rendered him to Posterity in a different Character from what he now hath?

And by the experience of all times, and the consideration of humane frailty,

frailty, this conclusion is manifestly deduced, that it is not possible to keep men at all times ( be they the Houses, or the King and his Councell ) but there will be sometimes some deviation from the Lawes, and therefore the constant and certaine powers fixed by the ancient Law must not be made voyd, and the Kings Ministers; the Lawes doe punish where the Law is transgressed, and they onely ought to suffer for the same.

At this Parliament the Houses exhibited a Bill to take away the suffrages of Bishops in the upper House of Parliament; and have silence & read there shall be no more Bishops at all, might not the King if he had so pleased have answered this Bill with *Le Roy's avisera*, or *ne vult*? it was against *Magna Charta*, *Articuli Cleri* and many other Acts of Parliament. And might have farther given these reasons, if it had so pleased him: for the same: First, that this Bill destroyes the Writ whereby they are made two Houses of Parliament, 14 *Hen. 7. fol. 2. Evesq; est signior de grand honneur*, the King in the Writ being *cum prelati colloquium habere*: Secondly, they have been in all Parliaments since we had any, and voted, but in

such wherein they themselves were concerned : And there have been Bishops here since we were Christians, and the Fundamentall Law of the Kingdome approves of them : If any of them were conceived offensive, they were left to Justice, and his Majesty would put in inoffensive men in their places ; but since his Majesty hath passed the Bill for taking away their Votes in Parliament, it is a Law that bindes us so farre.

Upon the whole matter the Law hath notably determined that Bills agreed by both Houses, pretended to be for the publick good, are to be judged by the King, for in all Kings Reignes Bills have been preferred by both Houses, which alwaies are pretended to be for the publique good, and many times are not, and were rejected with *Roy's anisera*, or *Roy ne veut*.

This Parliament began the 3 of November 1640. before that time in all the kings reign no armed power did force any of the people to doe any thing against the Law ; what was done was by his Judges, Officers, Refers, and Ministers from that time untill the 20. of Ia. 1641. when the King went from London to avoyd the danger of frequent tumults, being a year and 3 months, Privie Counsellors and all his Justices & Ministers were left to the Justice of the Law, there wanted not time to punish punishable men.

There

The Sphere of the House of Commons is to represent the grievances of the Countrey, to grant aydes for the King upon all fit occasions extraordinary, to assent to the making or abrogating of Lawes : The Orb of the House of Lords to reforme erroneous judgements given in the Kings Bench, to redresse the delays of Courts of Justice, to receive all Petitions, to advise his Majesty with their Councell, to have their Votes in making or abrogating of Lawes, and to propose for the common good, what they conceive meet.

*Lex non cogit ad impossibilia*, Subjects are not to expect from Kings impossible things, so many Judges, Councillours, Sheriffes, Justices of the Peace, Commissioners, Ministers of State, that the King should over-look them all, cannot be, it is impossible.

The King is virtually in his ordinary Courts of Justice; so long as they continue his Courts; their charge is to administer the Lawes in being, and not to delay, deferre, or sell Justice for any Commandment of the King. We have Lawes enough; *Instrumenta bona leges sunt boni viri*, good Ministers, as Judges and Officers are many times wanting, the

houses propose new Lawes, or abrogation of the old, both induce novelty; the Law for the reasons aforesaid, makes the King the onely Judge, who is assisted therein by a great number of grave, learned, and prudent men, aforesaid.

For the considerations aforesaid the Kings Party adhered to him, the Law of the Land is their **Right**, their **Guide**, no offence committed where that is not violated; they found the Commission of **Re- tray** warranted by the Law; they found the King in this Parliament to have quitted the **Ship-money**, **Knighthood-money**, **seven Counts of Justice**, consented to a **Crime** all **Parliament**, settled the **Parliament** bounds, took away the **Carriage** of the **Market** of the household, transferred the House with the **Barry**, passed a **Bill** not to dissolve this **Parliament** without the Houses assent; no people in the world so free if they could have been content with **Lawes**, **Orders**, and **reason**, and nothing more could or can be devised to secure us, neither hath been in any time.

Notwithstanding all this we found the King driven from **London** by frequent



frequent tumults, that two thirds and more of the Lords had deserted the House for the same cause, and the greater part of the House of Commons left that House also for the same reason; new men chosen in their places against **Law**, by the pretended Warrant of a **counterfeited Seale**, and in the Kings name against his conscience, levying Warre against him, and seizing his Ports, Forts, Magazines and Revenue, and converting them to his destruction, and the subversion of the Law and Land, laying Taxes on the people, never heard of before in this Land; devised new Oathes to oppose Forces raised by the King, nor to adhere to him, but to them in this Warre which they call the **Biggish Oath**, and the **Upp and Covenant**.

By severall wayes never used in this kingdome, they have raised Monies to foment this Warre, and especially to enrich some among them; namely, first, **Excis**, secondly, **Contributions**, thirdly, **Demurrations**, fourthly, **Fitt-parts**, fifthly, **Twentieth-parts**, sixthly, **Walemeney**, seventhly, **Sale of Blunder-bowes**, eighthly, **Loanes**, ninthly, **Benevolences**, tenthly, **Collection**  
**ons**;

and upon their fast-dayes, eleventhly, upon Impositions upon Merchandizes, twelfthly, Customs maintained upon the charge of private men, thirteenthly, Fifty Subsidies at one time, fourteenthly, Compositions with such as they call Delinquents, fifteenthly, Sale of the Coppy Lands, &c.

From the Kings Party meanes of subsistence are taken; before any Indictment, their Lands seized, their goods taken, the Law allowes a Traitor or Fellow attained, *Necessaria sibi & familia sua in victu & vestitu*, where is the Covenant? Where is the Petition of Right? Where is the liberty of the Subject?

First, we have ayded the King in this Warre contrary to the Negative Oath, and other Votes: Our Warrant is the twenty fifth of *Edward* the third, the second Chapter, and the said resolutions of all the Judges.

Secondly, we have maintained the Commission of *Murder*, by the Kings Command, contrary to their Votes: We are warranted by the Statute of the fifth of *Henry* the fourth, and the judgement of Sir *Edward Coke*, the Oracle of the Law as they call him.

Thirdly, we maintained *Arch-Bishops*

1 R. 3. cap.  
3 Bract. li. 1  
3. c. 8. Stran-  
ford, 192.  
Sir Geo.  
Fleetwoods  
Case, 8. pars  
Cook 7. H. 4  
last leaf.

q. pars Infit.  
225.  
2 Infit.  
696.  
The Law so  
at the Edi-  
tion of that  
booke.  
Mutton and  
Cook.

**Bishops and Bishops**, whom they would suppress. Our warrant is, *Magna Charta*, and many Statutes more.

Fourthly, we have maintained the Booke of **Common prayer**, they suppress it: Our warrant is five acts of Parliament in *Edward the first*, and *Queene Elizabeths time*, 5 *Pelcha* 35, *Elizabeth inter placita Corona in Banco Regis*, New booke of Entries, fol. 252. *Perry*, for publishing two scandalous Libels against the Church Government, was indicted, arraigned, attainted, and executed at Tyburne.

Fifthly, we maintained the **Spittin** of the Kingdome to belong to the King, they the contrary: Our warrant is the Statute of the seventh of *Edward the first*, and many Statutes since, the practise of all times, and the Custome of the Realme.

Sixthly, we maintained the countervailing of the great **Deals** to be high Treason, and so of the usurpation of the **King's Power**, **Power**, **Shipping**, **Castles**, and his **Revenues**, and the coming of **Spain**, against them: We have our warrant by the said Statute of the twenty fifth of *Edward the third*, Chapter the second, and divers others

thers since , and the practise of all times.

Seventhly , we maintaine that the **King is the onely supreme Governour in all causes** : They , that his Majesty is to be governed by them : Our warrant is the Statutes of the first of *Queene Elizabeth* , Chapter the first, and the fifth of *Queene Elizabeth* the first.

8 Ed. 4. fol. 4.  
Eighthly , We maintaine that the **King is King by an inherent birth-right, by nature, by Gods Law, and by the Law of the Land.** They say his Kingly right is an Office upon trust : Our warrant is the Statute of the first of *King James* , Chapter the first. And the resolution of all the Judges of *England* in *Calvins Case*.

Ninthly , wee maintaine that the **politick capacity is not to be severed from the naturall.** They hold the contrary : Our warrant is two Statutes (*viz.*) *exilium Hugonis* in *Edward* the seconds time, and the first of *Edward* the third Chapter the second, and their Oracle who hath published it to Posterity , that it is **dennable, detestable, and execrable Treason,** *Calvins Case* *vers* 7. fol. 11.

Tenthly , wee maintaine that who

spies the King at home or abroad, ought not to be molested or questioned for the same, they hold and practise the contrary; Our warrant is the Statute of the eleventh of *Henry the seventh*, Chapter the first.

Eleventhly, wee maintaine that the King hath power to dissent to any Bill agreed by the two Houses: which they deny: Our warrant is the Statute of the second of *Henry the fifth*, and the practice of all times, the first of *King Charles*, Chapter the seventh, the first of *King James*, Chapter the first.

Twelfthly, wee maintaine that Parliaments ought to be holden in a quiet and peaceable manner, without tumults; They allowed multitudes of the meanest sort of the people to come to *Westminster* to cry Coll. of  
for justice when they could not have Ord. 1613  
their will, and keepe guards of armed men to wait upon them: Our warrant is the Statute of the seventh of *Edward the second*, and their Oracle.

Thirteenthly, wee maintaine that there is no State within this Kingdom but the Kings Majesty, and that to adhere to any other State within this Kingdom is high Treason: Our warrant is the Statute.

tute of the third of King *James*, Chapter the fourth, and the twenty third of *Queene Elizabeth*, Chapter the first.

Fourteenthly, wee maintaine that to levy a warre to remove **Counsellours**, to alter Religion, or any **Law** established in high Treason, They hold the contrary: Our warrant is the resolutions of all the Judges of *England* in *Queene Elizabeths* time, and their Oracle agrees with the same.

Fifteenthly, wee maintaine that no man should be imprisoned, put out of his Land, but by due course of Law, and that no man ought to be adjudged to death but by the Law established, the Customs of the Realme, or by Act of Parliament; They practise the contrary in *London*, *Bristol*, *Kent*, &c. Our warrant is *Magna Charta*, Chapter the twenty ninth, the *Petition of Right*, the third of King *Charles*, and divers Lawes there mentioned.

Wee of the Kings party, did and do detest **Monopolies**, and **Ship money**, and all the grievances of the people as much as any men living, wee do well know that our estates, lives and fortunes are preserved

ved by the Lawes, and that the King is bound by his Lawes, wee love Parliament, if the Kings Judges, Counsell or Ministers have done amisse, they had from the third of November, 1540. to the tenth of January, 1641. time to punish them, being all left to justice, ~~where is the Kings fault.~~

The Law saith ~~the Kings can do no wrong~~, that he is *medius Regni* *inter patriam sponsus Regni qui per annu-*  
*tionem*, is espoused to his Realme at his Coronation; The King is Gods Lieutenant, and is not able to do an unjust thing, these are the words of the Law.

*11 pars Cooks  
Reports  
Magdalen  
Colledge  
Case.*

One great matter is pretended, that the people are not sure to enjoy the Acts passed this Parliament, A succeeding Parliament may repeale them; The objection is very weake; a Parliament succeeding to that may repeale that repealing Parliament: That feare is endlesse and remediesse, for it is the essence of Parliaments being compleat, and as they ought to be, of Head, and all the Members, to have power over Parliaments before; Parliaments are as the times are; If a turbulent faction prevails, the Parliaments are wicked, as appears by the examples recited before of extreme wicked

wicked Parliaments ; if the times be sober and modest, prudent and not bi-  
 assed, the Parliaments are right good,  
 and honourable, and they are good  
 medicines and salves ; but in this  
 Parliament *excessit medicina modum*.

In this cause and warre betwene  
 the Kings Majesty, and the two Hou-  
 ses at *Westminster*, what guide had the  
 Subjects of the Land to direct them  
 but the Lawes ; What manner  
 could they use to discern what to fol-  
 low, what to avoid, but the Lawes ?  
 The King declares it **Treason** to ad-  
 here to the Houses in this warre : The  
 Houses declare it **Treason** to adhere  
 to the King in this warre : The Sub-  
 jects for a great and considerable part  
 of them (Treason being such a crime  
 as forfeits life and estate, also render  
 a mans Posterity base, beggerly, and  
 infamous) looke upon the Lawes, and  
 finde the Letter of the Law require  
 them to assist the King, as before is  
 manifested ; was ever Subject crimi-  
 nally punished in any age or Nation for  
 his pursuit of what the Letter of the  
 Law commands ?

The Subjects of the Kingdom  
 finde the distinction and interpretation  
 now put upon the Lawes of *Ab-  
 stractum & Concretum*, Power and Per-



son, body politick, and naturall, personall  
presence and virtuall, to have  
been condemned by the Law; and  
the Kings Party had both the Letter  
of the Law, and the interpretation  
of the Letter cleared to their judgments,  
whereby they might evidently  
perceive what side to adhere to,  
what satisfaction could modest peace-  
able and loyal men more desire?

*A verbo legis in criminibus & poenis  
non est recedendum*, hath been an ap-  
proved maxime of Law in all ages  
and times: If the King be King and  
remain in his Kingly Office (as they  
call it) then all the said Lawes are a-  
gainst them without colour; they say  
the said Lawes relate to him in his  
Office, they cannot say otherwise,  
they make Commissions and Pardons  
in the Kings name, and the person of  
the King and his body politick can-  
not, nor ought to be severed as hath  
been before declared: And the  
Members of both Houses have  
sitting constantly in this Parliamt  
that the King is the onely su-  
preme Governour in all causes, e-  
ver all persons at this present  
time.

For what of verball or personall  
commands of the King which is ob-  
jected,

Coll. of Or-  
dinances,  
777.

1. Eli. cap.

1. Eli. cap.

1.

jected; we ascribe few things to be  
 subject thereto by the Law: But his  
 Majesties Command under his Great  
 Seale, which in this warre hath been  
 used by the Kings Command for his  
 Commission to leave and array men  
 that is no personall command (which  
 the Law in some cases disallows)  
 but that is such a command, so made  
 as all men hold their Lands by, who  
 hold by Patents; all Corporations have  
 their Charters which hold by Char-  
 ters, and all Judges and Officers their  
 places and callings.

Ob.

It is Objected, the King cannot  
 suppress his Courts of Justice,  
 and that this warre tended to their  
 suppression.

Sol.

7 p. 71 The  
 Ea le of  
 Westmer-  
 lands Ca. c.  
 1 Elis<sup>2</sup>. Dier.  
 165. 7 p. 71  
 Coke.

The case of  
 discontinu-  
 ance of  
 Proccesse.

The answer is, the King cannot  
 ought to suppress Justice, or his  
 Courts of Justice, nor ever did; but  
 Courts of Justice by *abuser or non use*  
 cease to be Courts of Justice; when  
 Judges are made, and proceedings in  
 those Courts holden by others than  
 Judges made by the King, and against  
 his command under the great Seale  
 and his Majesty is not obeyed, but  
 the Votes of the Houses, and his  
 Judges breaking that condition  
 Law, of trust and loyalty, implied in  
 their Patents, are no longer his Judges

to beges; they obey and exercise their pla-  
 ces by vertue of Writs and Procesles  
 Great under a counterfet Seale: The King  
 becomely can make Judges, the twenty  
 or his seventh of *Henry the eighth*, Chapter  
 the twenty fourth, **Justices of the**  
*which beas, &c.* The Kings Patent makes *28 H. 8.*  
 Judges: The chiefe Justice of the *Dier 11.*  
 made Kings Bench is made by the Kings  
 writ onely of all the Judges.

The **Great Seale** is the key of *Articuli fu-*  
 the Kingdome, and meet it is that *per chartas*  
 the King should have the key of *cap. 5.*  
 his Kingdome about him; which *3 p. 172 in fit.*  
 confutes their saying that the King got *552.*  
 the Seale away surreptitiously.

The King, and he only may remove *Briston. fol.*  
 his Courts from *Westminster* into some *23.*  
 other place: at *Turke* the Tearmes  
 were kept for seven yeares, in *Ed-*  
 ward the first's time; but for the  
 Court of Common Pleas, the place  
 must be certaine; for the Kings  
 Bench and Chancery, the King by the  
 Law may command them to attend  
 his person alwaies if it seeme so  
 meet unto him; but the removing  
 of the Common Pleas must be to a  
 place certaine, and so notified to the  
 people.

All the Bookes of Law in all times  
 Justice, that the King may grant con-  
 fance

6 H. 7. 9.  
6 Edw. Dist.  
216.

fance of all Pleas at his pleasure with  
in any County or Precinct to be he  
den there only\*, and remove the  
Courts from *W. ſtminſter* to ſome other  
place (for the Common Pleas, the  
place muſt be certaine, and ſo near  
ed to the people) and adjourne the  
Tearmes as he ſees cauſe : All which  
the two houſes have violated.

*Some seeming objections of Master Prinn's, scattered in divers books answered, and the truth thereby more fully cleared.*

**T**HE first of *Henry* the fourth, 1 06. revived the Statute of the eleventh of *Richard* the second, and repeales the one and twentieth of *Richard* the second, whereby certaine persons were declared Traytors to the King and kingdome; being of the Kings Party, by 11 *Rich.* 2.

True, but note, the eleventh of *Richard* the second, a Parliament beset <sup>So.</sup> with 40000. men, and the King assents to it, so an Act, and besides the first of *Henry* the fourth declares, that the Treasons mentioned in the Act of the eleventh of *Richard* the second, being but against a few private men, shall not be drawne into example, and that no Treason should be but such as the twenty fifth of *Edward* the <sup>9 Ed. 4 fol.</sup> third declares: All these are Acts <sup>So.</sup> passed by the King, and the three Estates, nor to be drawne into example in a tumultuous time, by a besieged Parliament, with an Army, and  
*Henry*

*Henry* the fourth being an Usurper makes that Act of the first of *Henry* the fourth to secure himselfe : Also what is this to the Votes of the two Houses onely at this time ?

2. Ob.

The Court of Parliament is above the King, for it may avoyd his Charters, Commissions, &c. granted against the Law.

And the Law is above the King.

Sol.

By the same reason you may say that the Courts of Chancery, or any of the Courts of Law at *Westminster* are above the King, for they make void no effect the Kings Charters, which are passed against the Law ; and the King is subject to Law, and sworne to maintaine it. Again, it is no Parliament without the King, and the King is the head thereof, he is *principium & finis* of a Parliament, as *Modus tenendi Parliamentum*, hath it, and two houses onely, want *principium & finis* of a Parliament, and it is a sorry Parliament that wants these : And therefore to say that Parliaments are above the King, is to say the King is above himselfe.

3. Ob.

The Parliament can enlarge the Kings Prerogative, therefore it is above him.

Sol.

If the King assent, otherwise not.

and then it is an Act of Parliament,  
and otherwise no Act.

*Bracton* saith, God, the Law, and the Kings Court, (*viz.*) his Earles and Barons are above the King, *viz.* in Parliament, as *Mr. Prynne* expounds it.

Where is then the House of Commons? Indeed, take God, the Law, and Earles and Barons together, it is true; but to affirme that the Earles and Barons in Parliament are above the King ( the King being the head of the Parliament, and they one of the members ) how an inferiour member is above the head, is hard to conceive; besides, that position destroyes all *Mr. Prynnes* discourse, who attributes much to the House of Commons.

The King is but one of the three Estates of Parliament, and two are greater then one; therefore above.

The Legs, Armes, and Trunke of the body are greater then the Head, and yet not above, nor with life without it; the argument holds for quantity, but not for quality; and in truth, the King is none of the three Estates but above them all; the three Estates are, the Lords Spirituall, the Lords Temporall, and the Commons; *Coke*, their Oracle, in his Chap. of Parl. f. 1

In Corporations, the greater num-

ber of voyces make all the Acts of the Corporation valid ; therefore in Parliament.

By this reason the Kings assent is needlesse, and to no end: and all the Acts of Parliament formerly mentioned , and Law-bookes have quite mistaken the matter, which with unanimous voyce requires the Kings assent as necessary : besides, the Corporations are so constituted by the Kings Charters, and the greater number of Votes shall make their Act valid.

The King, as King, is present in his Parliament as well as in all other his Courts of Justice, howbeit he is not there.

In his other Courts of Justice he hath no voyce, he is none of the Judges, in the Parliament he hath ; if his presence be not necessary, his voyce is not, nor his assent.

The originall prime legislative power of making Lawes, to binde the Subjects and their posterity, rests not in the King, but in the Kingdome and Parliament, which represents it.

Master *Prinne* in the same lease affirms, and truly, that the Kings assent is generally requisite to passe Lawes and ratifie them; the  
King

105.  
Sovereigne  
power of  
Parliament,  
46.

74.

101.



King is the Head of the Kingdome and Parliament, how then can a Body act without a Head?

A major part of a Corporation binds, therefore the major part in Parliament, and so of by Lawes.

The Corporation is so bound, either by the Kings Charters, or by prescription, which sometimes had the Kings concession; but prescription, and Law, and practise, alwaies left the King a negative voyce.

The King cannot alter the Bills presented to him by both Houses.

True, but the King may refuse them.

Acts of Parliament and Lawes ministered in the Reignes of Usurpers, binde rightfull Kings.

What is this to prove the two Houses power only, which is the question? A King *de facto* must be obeyed by them who submitted to him, and they are his Subjects by their submission, and not Subjects *de facto* to the true King, and such being Traytors and Rebels to the Regent King (having renounced the true King) when the lawfull King is restored, may be punished by him for their Treason against the Usurper: But here is a King still in both cases, and the pro-

ceedings at Law holds, the Judges having their Patents from the best Kings, in the Reignes of Kings, *de facto* or *de jure*, for all Kings are bound, and sworne to observe the Lawes.

11 Ob.

A King dyes without Heire, is an Infant, *non compos mentis*, &c. the two Houses may establish Lawes, &c.

Sol.

There is no *Inter-regnum* in England, as appears by all our Bookes of Law; and therefore the dying without Heire is a vaine supposition, and by their principle he is considerable in his politick capacity, which cannot dye at all: The Protector, assisted by the Councell of the King at Law, his twelve Judges, the Councell of State, his Attorney, Solicitor, and two Sergeants at Law, his twelve Masters of the Chancery, hath in the Kings behalfe, and ever had a Negative Voyce; but what is this to the present question? We have a King of full age, of great wisdom and judgement; the power of the two Houses in such a case to be over the King, cannot be shewn.

13 Ob.

The King cannot dissent to publique and necessary Bills for the common good, &c.

Sol.

Nor ever did good King; but who shall

shall be judge, whether they be publique and necessary? The *major* part in either of the Houses, for passing of Bills so pretended, may be but one or two voyces, or very few, and perhaps of no judicious men; is it not then fitter or more agreeable to reason, that his Majesty and Councell of State, his twelve Judges, his Sergeants, Attorney, and Solicitor, twelve Masters of the Chancery, should judge of the conveniency and benefit of such Bills for the publick good, rather than a minor, ( of which sort there may be in the Houses ) or a weake man, or a few, who oftentimes carry it by making the *major* part, which involves the consent of all? Let reason determine.

The Kings of *England* have been elective; and the King by his Coronation Oath is bound to maintaine *justas leges & consuetudines quas vulgus elegerit, &c.* 14 Ob.

*History* hath been in the Kingdome, and therefore to continue it still, will not be taken for a good argument; when things are settled for many ages, to looke back to times of confusion is to destroy all repose: The Act of Parliament, of the first of *K. James*, Chapter the first, and all our

extrant Lawes say, that the Kings Office is an heritage inherent in the bloud of our Kings, and their Birth-right.

1. E. 3. 1. And Usurpers that come in by the consent of the people, are Kings *de facto*, but not *de jure*, as appeares by the Acts of Parliament declaring them so, and by all our Law-hookes, and the fundamentall constitution of the Land, Regall power is hereditary and not elective.

2. H. 7. For the words (*vulgus elegerit*) if *vulgus* be applyed to the House of Commons, they of themselves can make no Lawes : The Peeres were never yet termed *vulgus* ; but allowing they be so called, the Lawes to be made be just, and who is fit to judge thereof, is before made evident.

3. 9. 6. Customes cannot referre to future time, and both are coupled, Lawes and Customes.

Princes have been deposed, and may be by the two Houses, 9<sup>o</sup>

5. 1. The depoters were **Claytons**, as appeares by the resolution of all the Judges of *England*, *Coke*, Chap. Treason, in the second part of the Institutes : And never was King deposed but in tumultuous and mad times, and by the power of Armies,

Of the birth of the King and they who were to be the succeeding Kings in the head of them, as *Edward* the third, and *Henry* the fourth.

The appeal to the Parliament for errors in Judgements in all Courts is frequent, 2<sup>o</sup> 06

This is onely to the House of Lords, and that is not the Parliament; the House of Commons have nothing to doe therewith; and in the House of Peeres, if a Writ of Errour be brought to reverse any judgement, there is first a Petition to the King for the allowance thereof, and the reason of the Law in this case is, for that the Judges of the Land all of them, the Kings Councell, and twelve Masters of the Chancery assist there, by whole advice erroneous judgements are redressed. Sol.

The Parliaments have determined of the rights of Kings, as in *Henry* the sixth time, and others, and Parliaments have bound the succession of Kings, as appears by the Statute of the thirteenth of *Queene Elizabeth*, Chapter the first: And the descent of the Crowne is guided rather by a Parliamentary Title then by common Law, 3<sup>o</sup> 17 07

If this objection be true, that the Title

Title to the Crowne is by Parliament, then we had no Usurpers, for they all had Parliaments to backe them ; yea, **Richard** the third, that Monster. All our Bookes of Law say they have the Crowne by descent, and the Statutes of the Land declare, that they have the same by inherent birth-right, And the Statute of the thirteenth of **Elizabeth**, the first Chapter, was made to secure **Queene Elizabeth** against the **Queene of Scots**, then in the Kingdome, claiming the Crowne of **England**, and having many adherents : And that Statute to that end affirms no such power in the two Houses ( which is the question ) but in **Queene Elizabeth**, and the two Houses, which makes against the pretence of this time.

Master **Wynne**, fol. 104 of his booke, intituled, the **Parliaments supreme power**, &c. Objecting the Statute of the first of **Queene Elizabeth**, and his owne Oath, that the King is the onely supream Governour of this Realme ; Answers, The Parliament is the supreme power, and the King supreme Governour : And yet there he allowes him a **Negative Voice** ; and fol. 107. confesseth, that

that Acts of Parliament translated the Crowne from the right Heires at Common-Law, to others who had no good Title, then the Parliamtary Title makes not the Kings, so powerfull in truth, that it escapes from a man unawares : To make a distinction betweene supreamie Governour, and supreamie power, is very strange, for who can governe without power?

The King assembles the Parliament by his Writ, adjournes, prorogues, and dissolves the Parliament, by the Law at his pleasure, as is evident by constant practise, the House of Commons never sate after an adjournement of the Parliament by the Kings Command : Where is the supreamie power?

*Vide Speer.*  
645. 4. par.  
Instit. 27.  
& 3.

The King by his Oath is bound to deny no man right, much lesse the Parliament, to agree to all just and necessary Lawes proposed by them to the King. This is the substance of the discourse against the Kings Negative Voyce.

18 06.

The King is so bound as is set downe in the Objection; but who shall judge whether the Bill proposed be just and necessary? For all that they do propose are so pretended and

3. L.

carried in either House, sometimes by one or two Voyces; or some few as aforesaid, and certainly it hath been shewen, the King, his Counsell of State, his Judges, Seigneys, Attorney, Solicitor, and twelve Masters of the Chancery can better judge of them, then two or three, or few more.

*Calvins case  
7 pars, fol.  
31.*

Mr. **Prynne**, fol. 45. In his Booke of the Parliaments interest to nominate Privy Councillors, calleth the opinion of the **Spencers** to debate the Person of the King from the **Crowne**, a strange opinion, and cites **Calvins Case**, but leaves out the conclusions therein mentioned, fol. 11. Master **Prynne** saith there, But let this opinion be what it will, without the Kings Grace and Pardon it will goe very farre, and two Acts of Parliament there mentioned are beyond an opinion: And in his Booke of the opening of the Great Seale, fol. 17. The Parliament hath no jurisdiction to use the Great Seale for Pardons Generall or Particular. Where is the supreme power then?

19 Ob.

Mr. **Prynnes** (opening of the Seale) pag. 19. saith, the Noblemen and State, the day after the Funerall of King **Henry** the third (King **Ed-**  
**ward**



ward the first his Sonne being in the Holy Land) made a new Great Seale, and Keepers of the same, And in **Henry** the sixth time, in the first yeare of his Reigne, the like was done in Parliament.

*A falso, al jura*, is no good Argument, for that in **Edward** the firsts time it was no Parliament, for **King Henry** the third was dead, which dissolved the Parliament, if called in his time, and it could be no Parliament of **Edward** the firsts time, for no Writ issued to summon a Parliament in his Name, nor could issue but under that New Seale, it was so suddenly done after **Henry** the thirds death, **King Edward** the first being then in the Holy Land, it was the first yeare of his Reigne, and no Parliament was held that yeare, nor the second yeare of his Reigne: The first Parliament that was in his Reigne, was in the third yeare of his Reigne, as appears by the printed Acts: Also the making of that Seale was by some Lords then present; What hand had the Commons in it? Concerning the Seale made in **Henry** the sixths time, the Protector was Vice-Roy according to the course of Law, and so the making

of that Seale was by the Protector in the Kings name, and that Protector, **Thomas** Duke of **Gloucester**, as Protector, in the Kings Name summoned that Parliament, and was Protector made by the Lords, and not in Parliament, as appeareth plainly, for that Parliament was in the first of **Henry** the sixth, and the first holden in his time, and power given by Commission to the said Duke, then Protector, to summon that Parliament, **Spence**, *ibid.* fol. 19. But the new counterfeit Seale was made when the King was at **Oxford**, in his owne Kingdome, and not in the holy Land.

Mr **Spence** in his Booke of the two Houses power to impose Taxes, restraines Malignants against any *Heres Corpus*, &c. saith, that the Parliament is above *Magna Charta*, and fol. 15. *ibid.* The Parliament hath power over *Magna Charta* to repeale the same when there is cause.

This Argument supposeth that they have the Kings power, which hath appeared formerly they have not: But suppose they had, *Magna Charta* containes many Morall Lawes, which by the Law of the Land a Parliament cannot alter, 21 **Br.** 7. 2.

**D. and Student, 2 Dialogue.** For example, it saith *cap. 11.* Justice shall not be sold, delayed, nor denyed to any man; but by this Argument the Parliament may make Law to delay, deny, and to sell Justice, which surely is a very ill position to maintaine.

What they would have, doth now by the Propositions sent to **Bed- castle** to his Majesty appeare, whereby they would have him divest himselfe, and settle in them all his Kingly power by Sea and Land, and of themselves to have power, without him, to lay upon the people of this Land what taxes they thinke meet, to abolish the Common prayer-booke, to abolish Episcopacie, and to introduce a Church Government not yet agreed, but such as they shall agree on.

His Majesty finding a prevailing party in both Houses to steere this course, and being chased away with Tumults from London, leaves the Houses for these Reasons, (*viz.*)

First, because to alter the Government for Religion, is against the Kings Oath:

Secondly, against their Oaths: For every of them hath sworne in this Parliament, That His Majesty

is

the onely supreme Governour in all Causes Ecclesiasticall and over all persons.

Thirdly, this course is against *Magna Charta*, the 1. Chap. and the last. *Salve sint Episcopi omnes liber tales sue*, Continued by thirty two Acts of Parliament: and in the two and twentieth of **Edward** the third, the 11<sup>th</sup> Chapter enacts, if any Statute be made to the contrary, it shall be holden for none: and so it is for judgments at Law, in the 25. of **Edward** the 1. chap. 1. 2. The great Charter is declared to be the Common Law of the Land.

Fourthly, they endeavour to take away by their Propositions, the Government of **Bishops**, which is as ancient as Christianity in this Land, and the **Booke of Common prayer** settled by five Acts of Parliament, and compiled by the **Reformers and Martyrs**, and practised in the time of **four Bishops**.

Fifthly, these Propositions taking away from his Majesty all his power by Land and Sea, rob him of that which all his Ancestors, Kings of this Realme, have enjoyed: That enjoyment and usage makes the Law, and a right by the same to his Majesty.

**CL**

They are against their owne Pro-  
testation made this Parliament,  
(117.) to maintain his Royall Person,  
Honour, and Estate; They are a-  
gainst their Covenant, which doth  
say, that they will not diminish his  
just power and Greatnesse.

For these reasons his Majesty hath  
left them, and as is beleevd, will  
refuse to agree to the said Proposi-  
tions; as by the fundamentall Law  
of the Land he may (having a **Neg-  
ative Voice**) to any Bills proposed.

The result of all is upon the whole  
matter: That the King thus leaving  
of the Houses, and his deniall to  
passe the said Propositions, are so far  
from making him a Tyrant, or not in  
a condition to governe, at the pre-  
sent; that thereby he is rendred a  
**just, Magnanimous, and pious**  
**Prince**: so that by this it appears  
clearly to whom the **Miseries** of  
these times are to be imputed. The  
remedy for all, is, an Act of Obliv-  
ion, and a Generall Pardon.

**God save the King.**

DAVID JENKINS, now  
*Prisoner in the Tower:*

28 Aprilis, 1647.

The

*The Vindication of Iudge  
Jenkins Prisoner in the  
Tower, the 29. of April,  
1647.*

**I** Was convened upon Saturday the 10 of this moneth of Aprill before a Committee of the House of Commons, wherein Master **Copbet** had the Chaire; and I was there to be examined upon some questions then to be propounded to me; to which questions I refused to give any other answer then that which was set downe in a paper I then delivered to the said Mr. **Copbet**, which followeth in these words:

Gentlemen, I stand committed by the House of Commons for High Treason, for not acknowledging, nor obeying the power of the three Houses, by adhering to the King in this matter. I deny this to be Treason, for the supreme and onely power by the Lawes of this Land, is in the King: If I should submit to any examination desired from your honour, which by the Statute Oath stands in opposition to the Kings power, I should

should confesse the power to be in you, and so condemne my selfe for a Traitor, which I neither ought nor will do.

I am sworne to obey the King, and the Lawes of the Land; you have not power to examine me by these Lawes, but by the Kings Writ, Warrant, or Commission; if you can produce either thereof, I will answer the questions you shall propose; otherwise I cannot answer thereto, without the breach of my Oath, and the violation of the Lawes, which I will not do to lose my life.

You your selves, and you this Parliament, have sworne that the King is our onely and supreme Governour; your Obedience, your Oath and Covenant; your League and Covenant, your Declarations, all of them subscrit to the Kingdoms, that your scope is the maintenance of the Lawes; these Lawes are and must be derived to us, our Liberties by the onely supreme Governour, the Foundation of Justice, and the life of the Law, the King. The Parliaments are called by his Writ, the Judges sit by his Writ.

( 46 )  
tents, so of all other Officers, the  
Cities and Townes corporate, go-  
verne by the Kings Charters; and  
therefore Once by the Law I can-  
not be examined by you, without  
a power derived by his Majesty, I  
neither can, nor will, nor ought  
you to examine me upon any ques-  
tions. But if as private Gentle-  
men, you shall be pleased to aske  
me any questions, I shall readily  
and truly answer every such que-  
stion, as you shall demand.

April 10. 1647.

David Jenkins.

This Paper hath beene mis-repre-  
sented to the good people of this Ci-  
ty by a printed one, styling it my Re-  
cantation, which I owne not; and be-  
sides is in it selfe repugnant (just like  
these times) the Body falls out with  
the Head. To vindicate my selfe from  
that Recantation, and to publish to  
the world the reaky of the Paper  
then delivered to Mr. Corbet and  
the matter therein contained, I have  
published this ensuing discourse.

No person who hath committed  
**Treason, Murder, or Felony,**  
hath any assurance at all for so much



as one houre of life; Lands or Goods, without the Kings gritions pardon, 27. Hen. 8. cap. 24.

The King is not virtually in the two Houses at ~~Westminster~~, whereby they may give any assurance at all, to any person, in any thing, for any such offence.

1. The House of Commons have declared to the Kingdome in their Declaration of the 28 of Novemb. last, to the Scots Papers, p. 8. That the King at this time is not in a condition to governe. No person or thing can derive a vertue to other men, or things, which it selfe hath not; and therefore it is impossible that they should have a vertue from the King to govern, which they declare he hath not himselfe to give.

2 The Law of the Land is, <sup>5 Eliz. 6. cap. 1</sup> That no person in any Parliament hath a voice in the House of Commons, but that he stands a person to all intents and purposes as if he had never been elected or returned, if before he sit in the House, he take such Oath upon the holy Evangelists, that the Kings Majesty is the sole and supreme Governour over all persons in all Causes. All the Members of the said House have taken

taken it, and at all times as they are returned do take it; otherwise they have no colour to intermeddle with the publick Affaires. How doth this Solemne and Legall Oath agree with their said Declaration, **That the King is in no condition to govern,** By the one it is sworne, he is the onely supreme Governour; by the other, that he is not in a condition to governe.

3. The Oath is not, that the King was, or ought to be, or had been, before he was seduced by ill Councell, our onely and supreme Governour in all Causes, over all persons; but in the present tense, **that he is our onely and supreme Governour,** at this present, in all causes and over all persons. So they the same persons swear one thing, and declare to the Kingdome the contrary of the same thing, at the same time, in that which concerneth the weale of all this Nation.

4 The Ministers in the Pulpits do not say, what they swear in the House of Commons. Who ever heard sithence this unnaturall Warre, any of their Presbyters attribute that to his Majesty which they sweare? The reason is, their Oath is taken at ~~Westminster~~ **Westminster** amongst themselves: that which their

their Ministers pray and preach, goes amongst the people. To tell the people that the King is now their only and supream Governour in all Causes, is contrary to that the Houses doe now practise, and to all they act and maintaine. They, ~~the two Houses~~ <sup>supposed</sup>, are the only and supream Governours in default of the King, for that he hath left his great Councell, and will not come to them, and yet the King desires to come, but they will not suffer him, but keepe him prisoner at ~~Windsor~~ : so well doe their Actions and Oathes agree.

5. They sweare now, King ~~Charles~~ is their only and supream Governor ; but with a resolution at the time of the Oath taking, and before and after, that he shall not be only or supream Governour, or only and supream, but not any Governour at all : For there is no point of Government, but for some yeares past they have taken to themselves, and used his name only, to abuse and deceive the people.

6. That this virtuall power is a meere fiction, their Propositions sent to ~~Oxford~~ to ~~Bristol~~, to be signed by the King, doe prove it so. What needs this adoe, if they have the virtuall Power with them at ~~Westminster~~ ?

7. To

7. To affirme that the Kings power (which is the vertue they talke of) is separable from his person is High Treason by the Law of the Land; which is so declared by that learned man of the Law, Sir **Edward Coke** so much magnified by this present Parliament, who in the 7 part of his Reports in **Calbins** case, fol. 11 saith thus. **In the reigne of Edward the second, the Spencers, the father and Sonne, to cover the Treason hatched in their hearts invented this damnable and damned opinion, that homage and Oath of Fealty was made by reason of the Kings Crowne, (that is of his politick capacity) then by reason of the person of the King upon which opinion they inferred three execrable and detestable consequences. 1. If the King do not demean himselfe by reason in the right of his Crowne his Lieges are bound by Oath to remove the King. 2. If the King that the King could not be restored by force of Law, that ought to be done per asperes that is by force. 3. That his Lieges be bound to governe in ayde of hym, and in default of hym; all which were condemned by two Parliaments, one**

in the reign of **Edw. 2.** called *exhibition Hugonis le Spencer*, and the other in anno 1. **Edw. 3.** cap. 2.

And that the naturall body and politick makes one indivisible body, & that these two bodies incorporate in one person make one body and not divers, is resolved as the Law of **Eng. 4 Ed 3.** **Plowden** Com. fol. 213 by Sir **Cobbet** **Catlin** L. Chiefe Justice of Eng. Sir **James Dier**, L. Chief Justice of the Common pleas, the L. **Sanders**, L. Chief Baron of the **Exchequer**, & by the rest of the Judges, viz. Justice **Kestell**, Justice **Brown**, Justice **Cordet**, Justice **Weston**, Baron **Streyll**, **Curus** and **Bowtrell**, Sergeant to the Queene, **Gerrard Aulurny** Generall, **Cartil** Atturney of the **Dutche**, **Plowden** the learnedest man of that age, in the knowledge of the Law and Customes of the Realme.

8. The Law in all ages without any controversie is and hath beene, that no Act of Parliament binds the Subjects of this Land without the assent of the King, either for Person, Lauds, Goods, or Name. No man can shew any syllable, letter, or line to the contrary in the bookes of the Law, or printed Acts of Parliament, in any age in this Land: If

9 Hen. 3  
M. 20.  
Chart. 30  
in every Age  
till this day,  
and in every  
Kings time,  
as appears  
by the Acts  
in Print,

the

1 part of the  
last 8th.

234. In fine  
where many  
of the Law-  
Books are  
cited.

7 Hen. 7. 14.  
11. of Hen.  
7. 20.

the virtuall power be in the House,  
there needs no assent of the King.  
The stiles of the Acts printed from  
9 Hen. 3. to 1 Hen. 7. were either,  
**The King ordaines at his Parliam-  
ent, &c.** or **the King ordaineth by  
the advice of his Prelates and Bar-  
ons, and at the humble Petition  
of the Commons, &c.** In Hen. 4.  
his time the stile altered, and has  
since continued thus; **It is or-  
dained by the Kings Majesty, and  
the Lords Spiritual and temporal,  
and Commons in this present  
Parliament assembled:** So that  
wayes the Assent of the King gives  
the life to all, as the soule to the bo-  
dy; and therefore our Law books  
call the King, the **fountaine of  
Justice, and the life of the Law.**

2 Hen. 4 Cap

23

4 part in Hist.

43.

Mr. Prins in  
his Treatise.

of the great  
Soul fol. 17.

27. Hen. 8

Chap. 24.

5. Mercy as well as Justice be-  
longes by the Law of the Land onely  
to the King. This is confessed by  
Mr. ~~Wyn~~, and it is so without any  
question: The King can onely par-  
don, and never more cause to have  
sufficient pardons then in such trou-  
blesome times as these, and God send  
us pardons and peace: None can  
give any pardon, but the King by the  
Law of the Land: **The whole and  
sole power of pardoning** ~~Crimes~~

and felonies belongs to the King  
are the words of the Law, and it is a  
delusion to take it from any other and  
utterly invalid. 27. Hen. 8. c. 24.

10. Queene Elizabeth summo-  
ned her first Parliament, to bee held  
the 23. of Jan. in the first yeare of her  
Majesties Raigne : The Lords and  
commons assembled by force of the  
same Writ, the 21 day the Queen fell  
sick and could not appeare in her per-  
son in Parliament that day, and there-  
fore protogued it untill the 25 of the  
same Month of January : Resolved  
by all the Judges of England, that  
the Parliament began not the day  
of the retorne of the Writ, viz. the  
23. of January, when the Lords  
and Commons appeared, but the  
25. of the said Month when the  
Queene came in person ; which  
sheweth evidently that this virtuall  
presence is a meere deluding fiction  
that hath no ground in Law, reason,  
or sense. They have the King now a  
prisoner at **Wolmby**, with guards up-  
on him, and yet they governe by the  
virtuall power of their prisoner.  
These are some few of the causes and  
reasons which moved me to deliver  
this paper to Mr. **Coybet**, which I  
am ready to justify with my life, and  
should

of Hist.  
Dic. 159.

should hold it a great honour to dye  
for the honourable, and holy Lawes of  
the Land : that which will save the  
Land from destruction, is an *Act of  
Oblivion*, and his *Majesties* gracious  
generall pardon, the *Souldiers* their  
years, and every man his own, and true  
and Peace established in the Land, and  
favourable regard had to the satisfaction  
of tender Consciences.

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*April 29. 1547.*

David Jenkins.

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THE  
ARMIES  
INDEMNITY,

WITH ADDITION;

*Together with a*

DECLARATION

SHEWING,

How every Subject of ENGLAND  
ought to be tried for Treasons,  
Felonies, and all other Capital  
Crimes, as is set down in  
the Lawes of the  
LAND.

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By DAVID JENKINS; NOW  
Prisoner in the Tower of London.

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Printed in the Year c, 1 6 4 8.

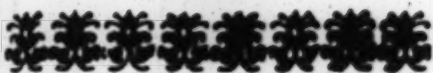


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*The Armies Indemnity, &c.*

UPON the publishing of the Ordinance of the 22 of May last, for the Indemnity of the Army, certaine Gentlemen well affected to the peace of the Kingdome, and safety of the Army, desired mee to set down in writing, whether by the Law of the Land, the said Ordinance did secure them from danger, as to the matters therein mentioned: For whose satisfaction in a businesse wherein the lives and fortunes of so many men were concerned, and the peace of the Kingdom involved, I conceived I was bound in duty and conscience, faithfully and truly to set down what the Law of the Land therein is, which accordingly I have with all sincerity expressed in this following discourse.

The danger of the Armie by the Law of the Land is apparent to all men: It is high Treason by the Law of the Land to leavy warre against the King, to compasse or imagine his death, or the death of his Queene, or

25 Ed. 3. c.

21.

2 R. 2. c. 3.

1 H. 4. c. 10.

1 & 1. Ph. &

Mar. 6. 10.

of his eldest Sonne, to counterfeit his Money, or his great Seal; They are the very words of the Law: Other Treasons, then are specified in that Act, are declared to be no Treasons untill the King and his Parliament shall declare otherwise, they are the very words of the Law. King and Commons, King and Lords, Commons and Lords, cannot declare any other thing to be Treason, than there is declared; as appears by the Lord Cook, in the places cited in the Margin: A Law book published by order of the House of Commons this Parliament, as appears in the last lease of the 1. part of the Institutes, published likewise by their Order.

Mr. S. John  
the Solicitor  
in his  
speech upon  
the Arraign-  
ment of the  
Barle of  
Stratford  
Printed by  
order of the  
House of  
Commons  
P. 7. 13.

The Resolutions of all the Judges of England upon the said Statute of the 25 Edward 3. ( as appears in the said third part of the Institutes, Chap. High-Treason ) have been, that to imprison the King without his agree to certaine demands is High-Treason; to seize his Ports, Forts, Magazine for Warre, are High-Treason; to alter the Lawes is High-Treason.

The word King in the Statute of 25 Edw. 3. c. 2. must be understood of the Kings naturall person; for that person

person can only die, have a Wife, have a Son, or be imprisoned.

The Priviledge of Parliament protects no man from treason or felony, 4 pars inst. c. Parl p. 15. howbeit he be a Member; much lesse can they protect others: Those who cannot protect themselves, have no colour to make Ordinances to protect others who are no Members.

The Statute of 11 Hen 7. c. 1. doth by expresse words free all persons who adhere to the King. 11 H. 7 c. 1.

The Army by an Act of Indemnity free themselves from all those dangers, which an Ordinance can no more do than repeale all the Lawes of the Land, the whole and sole power by Law to pardon all Treasons, Felonies, &c. being solely and wholly in the King, as is cleared by the Statute of 27 H 2. c. 24. and the Law of the Land in all times. Stamfo d. 1. 2. fol. 99. 18 Ed. 3. Statutes at larg 144. 20 Ed. 3. c. 1. Ric. 2. c. 10. 4 pars inst. pag. 23. 48. 29.

Having shewed the danger of the Army by the Law of the Land, next consider the Ordinance of the Lords and Commons published the 22 of May last for their Indemnity; by the ensuing discourse it doth appear they have no Indemnity at all thereby.

The Indemnity proposed by the Ordinance, is for an Act done by the  
E 4 authority

authority of the Parl. or for the service or benefit thereof; and that the Judges and all other Ministers of Justice shall allow thereof.

This Ordinance cannot secure the Army for these reasons.

1. Their Judges are sworne to doe justice according to the Law of the Land, and therefore the Judges must be forsworne men if they obey it; because an Ordinance of both Houses is no Law of the Land, and no man can believe they will perjure themselves so palpably and visibly in the eye of the World.

2. All tryals for treasons, felonies, robberies, and such like capitall offences, are by the Law of the Land to be by indictment of a Jury appointed out of the Neighbourhood where the offence was done: there is no common Jury-man but understands what the Law is in these cases as well as the best Lawyers, and the Law makes the Jury Judges of the fact, whereby the souldier is left to their mercy whom he hath offended (as some of them have lately had wofull experience, and thereupon doe rightly apprehend their danger) Now no man can think that the Jurors will perjure themselves to acquit the souldiers for robbing and plundring of

3 Pars inst.  
p. 21.  
2 pars inst.  
47. 48.  
3 pars inst.  
197.  
Princes case  
8, reports.

Alagna  
Charta cap.  
29.  
25 Ed 3. c.  
4.  
18 H 1. c. 1.  
37 Ed 1. c.  
41 Ed. 3. c.  
3.

Declaration  
of the Army  
presented at  
Walden,  
and printed  
by the ap-  
pointments  
of the Offi-  
cers subscri-  
bed.

of the Countreyes, and thereby utterly destroy their own Rights and Properties.

3. If the Judges conceive (as they may) that the taking of other mens hories or goods, is not by the Authority of Parliament, or for the service and benefit thereof, the souldier dies for it; they may say to steale or rob any man of his goods is not for the Parliaments service, but against it, which was alwayes the sense of the people, and doubtlesse the Jurors will not think otherwise.

4 This Ordinance is restrained to the authority, service or benefit of the Parliament: the Lords and Commons make no more a Parliament by the Law of the Land than a body without a head makes a man; for a Parliament is a body composed of a King their head, the Lords and Commons the Members. All three together make one body, and that is the Parl. and no other, and the Iudges may, ought, and I believe will according to their oathes proceed as not bound at all by this Ordinance. For it is restrained to the authority of Parliam. service or benefit thereof, whereas the two Houses are not the Parl. but onely parts thereof, and by the abuse and misunderstanding

4 Pars inst.

P. 1.

3 pars inst.

P. 20.

1 pers. inst.

P. 1.

28 H. 8. c. 11.

Dier 38 H. 8.

fol. 60.

12 H. 7. c. 20.

1 pars inst.

19.

Princes case

8 Reports.

ding of this word *Parliament*, they have miserably deceived the people.

23 Aug.  
1642.  
Col. of Ord,  
first part,  
565. 572.  
603. severall  
Ordinances.

5. This Ordinance is against their Ordinance which expressly prohibits plundering, and so there is one Ordinance against another, whereby their Judges have an outlet to proceed on the one or the other, and thereby the Army hath no manner of security.

1 Pars inst.  
109.  
1 pars instit.  
110.  
4 pars p. 49.

6. The word *Parliament* is a French word (howbeit such Assemblies were before the Norman Conquest here) and signifies in that language to consult and treat; that is the sense of the word *Parler* in the French Tongue. The Writ whereby the two Houses are assembled, which is called the Writ of Summons of Parliament, at all times, and at this Parliament used, and which is the warrant, ground and foundation of their meeting, is for the Lords of the House of Peeres, the Judges and Kings Counsell to consult and treat with the King (that is the *Parler*) of great concernments, touching, 1. the King, secondly, the defence of his Kingdome, thirdly, the defence of the Church of England. It cannot be a Parliament that will not parle with their King, but keep him in prison, and not suffer him to come to them and parle, and therefore the



Law, and sense, and reason, informing every man that is no manner of parliament ) the King with whom they should parle being so restrained that they will not parle with him ) the army hath no manner of security by this Ordinance; for their indemnification refers to that which is not in being untill the King be at Liberty.

7. It is more than probable that their Iudges before the last Circuite had instructions to the effect of this Ordinance ; but they the Iudges making conscience of their Oath, layd aside the said instructions, and ought, and may, and it is believed will no more regard this Ordinance, than the said instructions : What was done in the last circuit the army well knowes, touching many of their fellow-Souldiers.

The Common Souldiers second Apology.  
6. Grievances of the Army published 15. May last.  
Three grievances of Col. Riches Regiment.

8. The House in their first proposition to his Majesty for a safe and well-grounded peace, sent to Newcastle to desire a pardon from his Majesty for themselves : they who desire a pardon, cannot grant a pardon ( common reason dictates this to every man ) and therefore that the army should accept an indemnity for them, who seek it for themselves, or should conceive it of any manner of force, is a fancy; so that no man

man in the whole army, but may apprehend, that it is vain and a meer delusion.

9. His Majesty by his gracious message of the 12 of May last, hath offered an Act of Oblivion, and a generall pardon to all his people, this done the Law doth indemnifie the Army (without all manner of scruple) for any thing that hath been done; for it is an Act of Parl. when the King & two houses concur, and bindes all men. There is no safety by the Ordinance; there is safety by an Act of Parliament and will not reasonable men preferre that which is safe before that which is unsafe.

10. His Majesty by his said Letters agrees to pay the arrears of the army; I am sure that it is a publick debt, and the chiefest and the first that by the two Houses should be paid, and before any dividend or gratuities bestowed among themselves: for their blood, limbs, and lives have put and kept the both Houses at rest in the power they have: So by this concurrence of his Majesty for your indemnity, and for your arrears, the Army have not an Ordinance, or the Publick Faith, but the Law of the Land to make sure unto them their indemnity for all acts, and for their arrears, and therewith also bring peace to the Land.

11. The Kingdom and people generally desire these things. To such an army just and reasonable things must not be denied; the things formerly proposed are most just and reasonable, you may have them if you will, if you will not, you render this Kingdom miserable, wherein you will have your share of miseries: the head and the body are such an incorporation as cannot be dissolved without the destruction of both.

The additionall Ordinance of both Houses passed the 5. of June instant for the fuller indemnity of the Army, makes nothing at all to the matter. 1. For that it extends not to Felony, Homicide, Burglary, Robbery, or any other capital crime, which is the main business insisted upon, and most concerneth the Souldiers security.

12. The both Houses in the said additional Ordinance say, that it is expedient that all offences be pardoned and put in oblivion, pardon and oblivion cannot be understood to be for a time, but for ever; and they themselves confess that an Ordinance is not binding but *pro tempore*, which with the most advantageous interpretation can be but a reprieve or delay of the execution of the Law, and therefore that cannot pardon or put in oblivion by their own shewing.

Mr. Pym's  
Speech against  
the Earl of  
Stratford. p.  
16.

Six considerations  
printed by the  
command of  
the House  
of Commons.

Bur

57 H. 8. c.  
24.

But the Law of the Land is, (and so it hath constantly been practised in all times) that no persons of what estate soever, have any power to pardon treason, felony, or any other offences but the King only, who hath the sole and whole power to pardon all such crimes whatsoever. And in the same manner an Ordinance is of no authority at all to take away the right of private men's actions, by any evidence it can give; in truth all the evidence that this Ordinance gives is, that it records to posterity nothing but a lawlesse and distempred time.

*For remedy thereof I say again, it is a certaine truth, this Kingdom without an act of Oblivion, and a general pardon, and the payme nt of souldiers arrears, and a meet regard had to tender consciences, will unavoidably be ruined.*

June 10. 1647.

DAVID IENKINS  
Prisoner in the Tower  
of London.

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Sundry



Sundry Acts of Parliament  
mentioned and cited in the  
Armies Indemnities, set forth  
in words at large for the  
better satisfaction of such  
as desire rightly to be  
informed.

25. Edw. Chap. 5.

*A Declaration what offences  
shall be adjudged Treason.*

**W**hereas divers opi-  
nions have been be-  
fore this time, in  
what case Treason  
shall be said, and in what not:  
The King at the request of the  
Lords and of the Commons  
have made a Declaration in the  
manner as hereafter followeth:  
That

That is to say, When a man  
 doth compass, or bring to the  
 death of our Lord the King, or  
 of our Lady the Queen, or of  
 the eldest Son and Heir: or do  
 violate the Kings companion,  
 or the Kings eldest Daughter  
 unmarried, or the Wife of the  
 Kings eldest Son and Heir, or  
 if a man do levy War against  
 the Lord our King in his Realm,  
 or be adherent to the Kings ene-  
 mies in his Realm, giving to  
 them aid and comfort in the  
 Realm, or else there, and there-  
 of be probably attainted of open  
 deed by people of their condition  
 And if a man counterfeit the  
 Kings great or privy Seal, or  
 his Signet: and any man bring  
 false money into this Realm,  
 counterfeit to the money of any  
 land, and the money called Hal-  
 burgh, or other like to the true  
 money of England, &c.

11. Hen. 7 Chap. 1.

*None that shall attend upon the  
King. and do him true service,  
shall be attainted or forfeit any  
thing.*

**T**he King our Sovereign  
Lapculling to remembrance  
the duty of Allegiance of his  
subjects of this his Kingdom, and  
that they by reason of the same  
are bound to serve their Prince  
and Sovereign Lord in the  
time being in his Willers. for the  
salvance of him and the Land, a-  
gainst every rebellion, power, &  
might raised, raised against him:  
and with him to enter and abide  
in service in battall, if call so re-  
quire, and that for the same ser-  
vice that fortune ever fall by  
chance in the same battall against  
the will and will of the Prince  
(as in this last fortune passed  
with him late) that it is not rea-  
sonable, but against all laws, rea-  
son & good conscience, that his  
subjects going with their Sove-  
raign Lord in Willers, attending  
upon him in his person, as being  
in

in other places by his commande-  
ment within this Land or with-  
out, any thing should lose or for-  
feit, for doing their duty or ser-  
vice of Allegiance. It be there-  
fore ordained, enacted, and esta-  
blished by the King our Sovere-  
rign, by the advice and assent of  
his Lords Spiritual and Tem-  
porall and the Commons in this  
present Parliament assembled,  
and by authority of the same, that  
from henceforth no manner of  
person or persons whatsoever he  
or they be that attend upon the  
King and Sovereign Lord of  
this Land for the time being, in  
his person, and do him true and  
faithfull service of Allegiance in  
the same, or be in other places by  
his commandment in his  
iours within this Land; or with-  
out, that for the said due and  
true duty of Allegiance, he or  
they be in no wise convicted or at-  
tainted of high treason nor of other  
offences for that cause, by Act  
of Parliament, or otherwise  
by any processe of Law, whereby  
he or any of them shall lose or for-  
feit



life, lands, tenements, rents,  
 possessions, hereditaments,  
 goods, chattels, or any other  
 things, but to be for that  
 and service utterly dischar-  
 ged of any vexation, trouble, or  
 suit. And if any Act or Acts, or  
 other process of the Law here-  
 after thereupon for the same,  
 happen to be made contrary to  
 this Ordinance, that then that  
 Act or Acts, or other process of  
 Law, whatsoever they shall  
 be, shall be utterly void  
 and of no effect, that no per-  
 son or persons shall take any  
 benefit or advantage by this  
 Act, which shall hereafter decline  
 from his or their said Allegi-  
 ance.

Cap. 24. In the Statute of 27.  
 8. It is enacted that no per-  
 son or persons of what estate or  
 degree wher they be of, shall  
 have any power or authority  
 to pardon or remit any Treas-  
 on, Murders, Rape, Roub-  
 ters, or any other Felonies,  
 or but that the King shall have  
 the

the sole and whole power and authority thereof until it came to the Imperiall Crown, as of right it appertaineth, &c. And in the same Statute it is enacted further, That none shall have power of what estate, degree, or condition soever they be to make Offices of Eyre, Justices of the Eyre, Justices of Peace, &c. but all such Officers and Ministers shall be made by Letters Patents under the Kings great Seal in the name and by the authority of the King and his Heires & Successors Kings of this Realm.

In the first year of Queen Mary and the first Chapter, It is enacted by the Queen, with the consent of the Lords & Commons, That no deed or offence by act of Parliament made treason, shall be taken deemed, or adjudged to be High Treason, but only such as be declared, and expressed to be Treason by the Act of Parliament made 25. Ed. cap. 2. before mentioned.

A Declaration of M<sup>r</sup>. *David Jenkins*, now Prisoner in the Tower of *London*, one of His Majesties Judges in *Wales*, for tryals of Treasons, Murthers, Felonies, and all other, capital crimes, that they ought only to be by Juries, and not otherwise, unless it be by Act of Parliament.

**T**He Common Law of this Land is, that every Freeman is subject to a tryall by bill of Attainder in Parliament wherein His Majesty and both Houses must necessarily concur, for that tryall and attainder is an Act of Parliament to which all men are subject to.

a No man shall otherwise be destroyed, &c. but by the lawfull judgement of his Peers, or by the common Law of the Land. Peeres to Noblemen are Noblemen, Peeres to the Commons are Knights, Gen &c. Judgement

a Mag.  
Charta, 19. 1  
3 part. inst.  
fol. 38, 39.  
46, 48, 49..  
50. compo-  
sed by Sir  
Edi Cook  
and publi-  
shed by the  
Order of  
the House of  
Commons  
in May  
1641.  
4 part instic.  
fol. 41.  
356.

ment of peers referres to peers, those words, *The Law of the Land*, refers to the Commons; the Law of the Land is for the tryall of the life of a free Commoner, by indictment, presentment of good and lawfull men where the deed is done, or by Writ originall of the common Law, all this is declared in *Magna Charta*, c. 29, by 25, Ed. 3. c. 4. 28 Ed 3. c. 3. 37. Ed. 3. c. 8. 42 Ed. 3. c. 3. If the Lords will try any man by an Ordinance, they destroy that excellent Act of *Magna Charta*, and all those other good Laws.

Sir *Simon de Beresford* a free Commoner of *England* was condemned by the Lords to death by an Ordinance, which after the Lords have considering the matter, that they might be acquitted of that sentence, became suiters to the King, that what they had done in future time might not be drawn into president, because that which they had done was against the Law, b with this agrees the practise, and usage of all times in this Land, all the free Commoners of this Kingdome hath alwayes been tryd and acquitted or condemned in capitall causes by Iurers of their equals.

An Ordinance bindeth not in Law

b Rot. Par. 1  
roul. 4. E. 2.  
Num. 2. part  
inst. p. 50  
with this agrees Sir  
John Lees  
case, Rot.  
Par 42. E. 3.  
Num. 22. 23.  
2. inst. f. 50.

at all, and but *pro tempore*, as the two Houses now affirme, a man's life cannot be tried by that which is not binding, and to continue for all times, for a life lost cannot be restored.

By an Act of Parliament of the 1. & 2. *Philip* and *Mary* c. 10. It is enacted that all trials for Treason hereafter to be had, shall be according to the course of the Common Law and not otherwise.

If the crime charged upon any be Treason against the two Houses (against the Parliament it cannot be, for there is no Parliament without the King) *That is no Treason in Law*, as appears by 25 *Ed.* 3. c. 2. 11. R. 2. c. 3. 1. H. 4. c. 10. 1. & 2. *Philip* and *Mary*, c. 10. 3. part of the *Institutes*, page 21.

An Act of Parliament to make any a Judge where he is party, is a void act, & for none can be a Judge and party in the same cause, and therefore the House of Peeres being a party touching the crime charged upon any man, whom they would try by an Ordinance for Treason against both Houses, cannot be a Judge.

By the Petition of Right, & if any man deserve death he ought to suffer the

c See 4. p. inst. f. 23. 18. 232. 198. 192. 2. p. inst. f. 47. 48. 157. 641. 4. H. 7. f. 18. 1. H. 7. f. 14. 3. P. inst. f. 41.

d Dr Bonams case, 8. part of Cooks Reports.

e Petition of Right, 3. C. R.

the same according to the Laws of the Land established, and not otherwise, but an Ordinance of the Lords is no established Law.

3 part last.  
fol. 89.

The protestation, the Vow and Covenant, the solemn League and Covenant, the Declarations of both houses, had, made and published since this unnaturall Warre, are amongst other things sworn and set downe to be for maintainance of the Lawes, the people of this land ought to enjoy the benefit of their Birth-right, the Law of the Land, and the making good of the said protestation, Vow and Covenant, League and Covenant, and Declarations, otherwise truth must be said and will be said, that there is brought in a new arbitrary and tyrannicall government.

If the Lords have taken one mans life by an Ordinance, they are not bound to take any more, and the case differs in case any appeale be made from a tryall by Ordinance to a tryall at common Law, which was not done by that man whose life was taken away by an Ordinance

The Lords ought to remember that His Majesty and His progenies have made them a house of peers, they are trusted to counsell him in peace

and defend him in warre, his Majesty's *Nevels*  
 Parliament is to consult and treat *case 8 part*  
 with the Peers, and with his Councell *Cooks re-*  
 Law, Judges, his Sergeants, Attur- *ports.*  
 ry, and Solicitor, and Masters of the  
 Chancery, the Lords and that counsell  
 by the respective Writ of Summons  
 to Parliament are to give Counsell,  
 the House of Commons by their  
 Writ to performe and consent;

In the House of Lords, the Court  
 of Parliament onely is, for they onely  
 examine upon Oath, *b* with them, the  
 King in person sits, and by them  
 their erroneous judgements \* (upon  
 Petition to his Majesty for obtain-  
 ing of a Writ of Error) by the advice  
 of the Judges are reversed, or affirm-  
 ed, &c. The Lords are to remember  
 that their eminency and grandeur is  
 reserved by the Lawes, if they leave  
 all to will, and dishonour their King,  
 and make nothing of the Lawes, they  
 will make nothing of themselves in  
 the end.

And therefore, it is well worth  
 your observation what was said by M.  
 John Pym a Member of the House of  
 Commons in his speech against the  
 Earle of *Strafford*, in the beginning  
 of the Parliament, which speech is  
 published by the expresse order of the  
 P House

2 4 part in-  
 tit. fol. 4. p.  
 27 Edw. 3.  
 c. 1. 15.  
 3 part in tit.  
 fol. 4. p. 1.  
 6 Edw. 3.  
 fol. 10.  
 \* 14 E. 3. c. 1.

House of Commons, the words  
these. The Law is that which puts a  
ference betwixt good and evil, betwixt  
just and unjust, if you take away the  
Law, all things will fall into a confusion,  
every man will become a Law unto him-  
self, which in the depraved condition  
of humane nature must needs produce  
many great enormities: Lust will be-  
come a Law, and Envy will become a  
Law, Covetousnesse and Ambition  
will become Lawes, and what  
States, what decisions such Lawes will  
produce, may easily be discerned, i. e.  
They that love this Common-wealth  
as things now stand, will use all means  
to procure an Act of Oblivion, a ge-  
nerall pardon from His Majesty, the  
Souldiers their Arreares, and tender  
consciences a just and reasonable sa-  
tisfaction, else we must all perish, first  
or last.

May 17, 1647

God preserve His Majesty, and the  
Lawes, wherein their Lordships and  
the whole Kingdom are concerned.

David Jenkins prisoner in  
the Tower of London.

THE

Act 1 per.  
to Joel.  
pag. 140.  
163.



THE  
CORDIALL  
OF

Judge Ienkins,

For the good People  
of L O N D O N.

*In reply to a Thing, called*  
An Answer to the poy-  
sonous seditious Paper of  
Mr. D A V I D I E N K I N S;  
by H. P. Barrister of  
Lincolns-Inne.



Printed in the Yeare, 1648.



The  
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The Cordiall of Judge  
 JENKINS, for the  
 good People of  
 LONDON.

**A**FTER the said Mr. H.P. hath  
 made a recitall of the heads  
 of my *Vindication*, he de-  
 duced his Answer unto  
 these eight particulars;  
 which follow verbatim.

1.

It cannot be denyed, but the Parlia-  
 ment sits by the Kings Writ, nay if Su-  
 preme Law bee greater than the Kings  
 Writ, it cannot be denyed but the Par-  
 lia. sits, or ought to sit by something  
 greater then the Kings Writ and if it be  
 confessed that the Parli. sits by the kings  
 writ, but do not act by the Kings writ,  
 then it must follow that the Parlia. is  
 a void vaine Court, and sits to no pur-  
 pose; nay it must also follow, that the  
 Parli. is of less auth. rity, and of less use  
 than any other inferiour Court, foras-  
 much as it is not in the Kings power to

controule other Courts, or prevent  
them from sitting or sitting.

2.

This is a gross *non sequitur*, the Kings  
power is in himself; *ergo* it is not de-  
rived to, nor does reside virtually in the  
*Parliament*. For the light of the Sun  
remains imbodied, and unexhausted in  
the Glob of the Sun, at the same time  
as it is diffused and displayed through  
all the body of the aire; and who sees  
not that the King, without conveying  
himself, gives Commissions daily  
*Oyre* and *Terminer* to others, which  
himself can neither frustrate nor elude  
but for my part I conceive it is a great  
error to infer that the *Parliament* has  
only the Kings power, because it has  
the Kings power in it: for it seems to  
me, that the *Parliament* does both  
and act by concurrent power, devolved  
both from the King and Kingdome  
and in this some things are more ob-  
vious and apparent than in others. For  
by what power does the *Parliament*  
grant Subsidies to the King? if only  
by the power which the King gives  
then the K. may take Subsidies without  
any grant from the *Parliament*: and  
it be so by a power, which the people  
give to the *Parliament*, then it will fol-  
low,

Now, the Parliament hath a power gi-  
ven both by King and Kingdom.

3.

The sending Propositions to the  
King and desiring his concurrence, is  
farer worth an Answer: for Subjects  
may humbly petition for that which is  
their strict right and property. Nay it  
may sometimes becom a superior to  
interfuit to an inferior for matters in  
themselves due. God himself hath not  
utterly disdained to beseech his owne  
miserable, impious, unworthy crea-  
tures: besides, tis not our Tender, that  
the King hath no power, because hee  
hath not all power, nor that the King  
cannot at all promote our happinesse,  
because he hath no just claime to pre-  
vent our ruine.

4.

We affirm not that the Kings power  
is separated from his person, so as the  
two *Spencers* affirmed, neither doe we  
draw conclusions out of that separati-  
on as the two *Spencers* did, either that  
the King may be removed for misde-  
meanours, or performed *per asserit*:  
that the Subject is bound to go-  
vern in ayd of him: we only say, that  
his power is distinguishable from his

F 4

person

person, and when he himselfe makes a distinction betwixt them, commanding *one thing* by his legall Writs, Courts and Officers, and commanding *another thing* extrajudicially by word of mouth, Letters, or Ministers, we are to obey his power rather than his person.

5.

We take not from the King all power of pardoning Delinquents, we only say it is not proper to him *quoad modo*: For if the King pardon him which hath murdered my son, his pardon shall not cut me off from my appeal; and 'tis more unreasonable, that the Kings pardon should make a whole State which hath suffered remediless, than any private man. So if the King should deny indemnity to those which in the furie of war have done things unjustifiable by the Lawes of peace, and thereby keep the wounds of the State from being bound up, 'tis equitable that an Act of Indemnity should be made forcible another way. And if his will not hold, yet this is no good consequence, the King is absolute in point of pardons, therefore he is absolute in all things else; and the parliament hath no power to discharge Delinquents.

linquencies, therefore it hath no power in other matters.

## 6.

The Parliament hath declared the King to be in no condition to govern but this must not be interpreted rigidly, and without distinction; for if the King with his Sword drawn in his hand, and pursuing the Parliament and their Adherents as Rebels, be not fit for all Acts of Government, yet it is not hereby insinuated that he is divested of the habit or right of Governing; if he be unqualified now, he is not unqualified for the future; if he may not do things destructive to the parliament, he is not barred from returning to the parliament, or doing justice to the parliament. This is a frivolous cavil, and *subterfuge*.

## 7.

We swear, that the King is our supreme Governour over all persons, and in all causes; but we do not swear he is above all Law, nor above the safety of his people, which is the end of the Law, and indeed *Paramount* to the Law it self. If he be above Law, or liable to no restraint of our Law, then we are no freer than the

*French* or the *Turks*, and if he be above the prime end of Law, *common safety*, then wee are not free as the *French* or *Turks*. For if the totall subversion of the *French* or *Turk* were attempted, they might by Gods Law, imprinted in the book of Nature, justify a self-defence; but we must remedilessly perish, when the King pleases to command our throats. Besides, how achieved the King of *England* such a Supremacy above all Law and the community it selfe, for what behoofe Law was made? If Gods donation be pleaded, which is not speciall to him, or different from what other Kings may pretend to, then to what purpose serve our Lawes, nay, to what purpose serve the Lawes of other Countreyes? for by this generall donation, all Nations are condemned to all servitude as well as we. If the Law of this Land bee appealed to, what Bookes hath Mr. *Locke* read, where hath he found out that *Lex Regia*, whereby the people of *England* have given away from themselves all right in themselves? Some of our Bookes tell us, that we are more free than the *French*; that the King cannot oppress us in our Persons or Estates, by imprisonment, denying  
just.



justice : or laying Taxes without our consents. Other Books tell us, that the safety of the people, is the supreme Law, and that the King hath both God and the Law for his Superiour. But all this is nothing to learned M. *Jenkins*.

## 8.

We admit, that no Acts of Parliament are compleat, or formally binding, without the Kings assent : yet this is still to be denied, that therefore without this assent particularly exprest, the two Houses can do nothing, nor have any virtual power at all, no, not to examine M. *Jenkins*, nor to do any other thing of like nature, though in order to publike justice and safetie. I have done, and with M. *Jenkins* would call in and lick up again his black infamous execrable reproaches, so filthily vomited out against the Parliament.

*To the first.*

I Was examined by a Committee appointed by the House of Commons : I say, and said that the House of Commons have no power to examine me, for that it is no Court ; every Court hath power to

3 H. 4. c. 3.  
3 H. 6. 46.  
19 H. 6. 43.  
35 H. 6. 5.

examine upon Oath ; this power the House of Commons never claimed: The Court of Pye-powders, court-Ban-  
ron, Hundred court, County court, and every other Court of Record, or not of Record hath power to examine upon Oath, and an examination without Oath is a communication only: examination in Law is upon Oath.

St Anthony  
Maynes  
case.

Cook 1. par.  
Reports.  
Lit. 2. lib  
Sec. 194 6.  
H. 4. 1.

There is no court without a power of tryall : the House of Commons have no power to try any offence, nor ever practis'd it by Bill, Indictment, Information, Plaint, or Originall Writ, to reduce it to tryall, nor to try it by Verdict, Demurrer or Examination of Witnesses upon oath, without which there can be no condemnation or judgement and hat which can attain to no reasonable end, the Law rejects as a thing *inutile* and *utile* ille, *Sapiens incipit a fine*.

6 pars inflit.  
fol. 4. & p

The Writ whereby they are called gives them power, *Ad faciendum & consentiendum* : To what? To such things *Quæ videtur de communi consilio ordinis & contingent* (107) in the Parliament: This makes nothing at all for a Court for the House of Commons: that *consilium* which that Writ intends, is cleared partly by the Writ for

for chusing Knights, &c. For the King by that Writ is said to resolve to consult and treat with the Prelates and Peeres of the Kingdome, for and touching the great concernments of the ~~Common~~-wealth (for the King never sits in the House of Commons:) and this also is made evident by the Writs to the Prelates, Peeres, Judges, and to his Counsell at Law: The words in the Writ are, *To appeare and attend the Parliament, Consilium impendens* the one doth *consilare*, the other *facere & consentire*.

The House of Lords, where the King sits in person assisted by His Lords, Judges, Serjeants, Atturney, <sup>7 H. 6. 23.</sup> Solicitor, Masters of the Chancery, <sup>1 H. 7. 10.</sup> is a court of Record to many purposes, <sup>13 Ed 3. c. 5.</sup> sit down in the Bookes of Law, and <sup>4 pars inst.</sup> the Statutes of the Land, and that court is enely in the House of Lords, where the King sits. <sup>p. 21.</sup>

A court must either bee by the Kings Patent, Statute Law, or by the common Law, which is common and constant usage: the House of Commons hath no Patent to bee a court, no Statute Law to bee a court, nor common usage: they have no Journal Booke, but since *Edward 6.* time, was there ever Fine by the House of  
Com-

Plowd.  
Com' 319.

Commons estreated into the Exchequer? For murder or Felony they can imprison no man, much lesse for Treason; that House which cannot do the lesse, cannot doe the greater.

25. H. 3. c. 4.  
3 Car. Petition of  
Right.

It is ordained, that ~~no man~~ shall be imprisoned or put out of his Franchise by the King or his Councell, but upon indictment or presentment of his good and lawfull Neighbours, where the deed is done, or by originall Writ at the Common Law, and so is *Lex terra* the Law of the Land mentioned in *Magna Charta*, cap. 29. expounded, and the said *Magna Charta*, and *Charta de Foresta* are declared by the Statute of 25. E. 1. c. 1. to be the Common Law of the Land. All Judges and Commissioners are to proceed *Secundum legem, & consuetudinem Regni Anglia*, as appears by all proceedings in all Courts, and by all Commissions: and therefore the house of Commons by themselves proceeding not by Indictment, Presentment, or Originall Writ, have no power to imprison men, or put them out of Franchise,

4 pars instit.  
p. 1.  
3 pars instit.  
p. 23.

This no way trenches upon the Parliament; for it is in Law no Parliament without King and both Houses; I have onely in my Paper deli-

delivered to Mr. *Corbet*, applied my selfe to that Committee, that had not power to examine mee, but I never thought, said, or wrote, that the Parliament had no power to examine me. The Law and custome of this Land is that a Parliament hath power over my life, liberty, lands and goods, and over every other Subject, but the House of Commons of it selfe hath no such power.

12. H. 7. 20.  
Princes case,  
8 Pars  
Cook.  
1 pars instir.  
p 159.  
14 H. 8. 3.  
Dier 38.  
H. 8. 6a.

For the Lord *Cokes* relation, that the House of Commons have imposed

1 pars inst.  
19. b.

Fines, and imprisoned men in Queen *Elizabeths* time, and since; Few facts of late time never questioned, make no power nor Court; *a facto ad jus* is no good argument; for the words of the Statute of 6. Hen. 8. c. 16. that a licence to depart from the House of Commons for any Member thereof, is to be entred of Record into the Booke of the Cleark of the Parliament, appointed, or to be appointed for that House, doth not conclude that the House of Commons is a Court of Records.

4 P. Inst. c.  
Parl.

Hobbarts  
reports fol.  
152.

For first, that Law of 6. H. 8. c. 26. handles no such question, as that, whether the House of commons be a court; it is a maxime in all Lawes, *Lex aliud trahit, nil probat*, the word

Hobbarts  
reports fol.  
154.

(Re-

(Record) there mentioned, is onely a memoriall of what was done and entered in a book : A plaint removed out of the County-Court to the Court of the common-Pleas, hath these words in the Writ of remove, *Recordari facias loquelam, &c.* and yet the county court is no court of Record : and so for ancient Demesne in a Writ of false judgement, the words are *Recordari facias loquelam, &c.* and yet the court of ancient Demesne is no court of Record ; and so of a court Baron, the Law and custome of England must bee preserved, or England will bee destroyed, and have neither Law nor custome.

Let any man shew mee, that the court of Lords, or the House of commons in any age hath made any man a Delinquent (*Rege dissentiente*) the KING contradicting it under his Great Seal. *Mitchell*, and others of late were condemned by the prosecution of the House of commons in King James his time ; did King James ever contradict it ? And so in ancient times, where the House of Peeres condemned the Lord *Latimer* in 50, E. 3. The Kings pardon freed him ; which shewes clea. ly, that the Kings expresse, or implied assent must of necessity

Fitz. Nat.

Br. 70.

Fitz. Nat.

Br. 13.

11 H. 4. 33.

34 H. 6. 49.

4 Pars Inst.

Tit. Parlia.

P. 23.

essitie be had to make a Delinquent.  
The execution of the sentence is in  
the Kings name.

The Gentl. saith, *That the Parlia-  
ment sits, or ought to sit by something  
greater than the Kings writ, &c.*

No Parliament did ever sit without  
the Kings Writ, nor could ever Par-  
liament begin without the Kings pre-  
sence in person, or by a Guardian of  
England by patent under the Kings  
Great Seal, the King being *in remo-  
tu*, or by Commission under the  
Great Seal to certain Lords repre-  
senting the Kings person, and it hath  
been thus in all Ages unto this Ses-  
sion of Parliament, wherein his Ma-  
jesty hath been pressed, and hath pas-  
sed two Acts of parliament, one for a  
Triennial parliament, and another  
for a perpetual, if the Houses please,  
to satisfy their desires; how these two  
Acts agree one with another, and with  
the Statute in Edw. th: Thirds time;

where parliaments are ordained to be  
holden every year, and what mis-  
chiefes to the people of this Land  
such length of Parliaments will pro-  
duce by protections and priviledges to  
free them and their menial servants  
from all debts during their lives, if  
they please to continue it so long, and

4. Pars inst.  
p. 4. & 6.

4 H. 3. c. 14.  
36. E. 3.

c. 10.

2<sup>d</sup>. Lac. the  
Act of Li-  
mitation of  
Actions.

c. 12.

now

how destructive to mens actions against them, by reason of the Statute of Limitations, which confines their actions to certain yeares, and many other inconveniences of greater importance, is easie to understand.

How can any man affirme, that the two Houses of Parliament do act now by the Kings Writ, which relates to counsel and treatie with the King, concerning the King, the defence of his Kingdom and of the Church of England, these are three points which it tends to, as appears by the Writ. They keep their King prisoner at *Holmby*, and will not suffer him to confesse and treat with them. They have made a Vow and Covenant to assist the Forces raised and continued by both Houses against the Forces raised by the King without their consent, and to the same effect have devised the Oath which they call the *Negative Oath*: Is this to defend the Kings Kingdom? or their kingdom?

When by their solemn League and Covenant they extirpate Bishops, Deanes and Chapters root & branch, Is this to defend the Church of England? (that Church must necessarily be meant, that was the Church of England when the said Writ bore test)

they

4. p. last.  
p. 14.  
Vow and  
Covenant.  
p. 11.

9. p. last.  
Cook Dean  
and Chap-  
ter of Nor-  
wich,



they were not summoned to defend a Church that was not in being; to destroy and defend the Church are very contrary things; the Church is not defended, when they take away and sell the Lands of the Church.

The Gentleman saith, *The King cannot controule other Courts of Justice, or prevent them from sitting, or sitting, and therefore not the two Houses, &c.* It is true, the King cannot controule or prevent his other Courts, for that they are his ordinary Courts of common Justice, to administer common right unto all men, according to the fixed Lawes. The Houses make no Court without the King, they are no Bodie corporate without the King, nor Parliament without the King, they all make one corporate Bodie, one Court called the Parliament, whereof the King is the Head, and the Court is in the Lords House, where the King is present: and as a man is no man without a head, so the Houses severed from the King, as now they are, have no power at all, and they themselves by levying War against the King, and imprisoning of him, have made the Statute for not dissolving, adjourning, or proroguing this Parliament of no effect, by the said Acts of their own:  
they

14 H. 8. 1.  
36. H. 8.  
Dier. 60.  
4. p. 111.  
p. 1.

they sit to no purpose without his assent to their Bills, they will not suffer him to consult with them, and treat and reason with them, whereby He may discern what Bills are fit to pass, and what not, which in all Ages the Kings of this Land have enjoyed as their undoubted Rights, and therefore they sit to no purpose by their own disobedience and fault.

27. W. 3.

c. 14.

28. W. 3. ii.

Dier.

2. R. 3. 11.

For the ordinary Courts at *Westminster*, the Judges in all those Courts are Judges by the Kings patent or Writ, otherwise they are no Judges: the Houses can make no Judges, they are no Judges at all who are made by them; the whole and sole power of making Judges belongs to the King: the King cannot controul or prevent his own Judges from sitting and acting, but the Houses He may, for they are not the Kings Judges but the judges of the Houses. In his other Courts the King commits his power to his Judges by his patent, and they are sworne to do common right to all men, and the King is sworn not to let them from so doing, the King cannot judge in those Courts, nor controul, but the King is both Judge and Controul in the Court of Parliament: *Quod* Acts for his assent or dissent doth give life

or

or death to all Bills. Many Lawyers have much to answer to God, this Kingdom, and to posteritie, for puzzling the people of this Land with such Fancies, as the Gentleman who wrote the Answer to my Paper, and others have published in these Troubles, which have been none of the least causes of the raising and continuing of them. And so I have done with the first part of this Answer.

A D, 2.

" For the *Non sequitur*, in the second Section of the Gentl. Answer, the Antecedent and the Consequent are his own.

(*libellus* :

*Quam recitas meus est (O Fidentius !)*

*Sed male dum recitas incipis esse tuus.*

My words are, that the King is not virtually in the two Houses at Westminster, to enable them to grant pardons, for that whole and sole power by the Law belongs to the King: My paper hath no such things, as that the Kings power cannot be derived to others, or the virtue of his power: For his power and the virtue of his power, is in all patents to his Judges, in Charters to Corporations, in Commission

27. H. 8.  
c. 14.

missions of all sorts, and in the Parliament assembled by force of his Writ of Summons, so long as they obey him: but when they renounce that power, and claim it not from the King, and declare to the Kingdom that he is not in condition to govern, and imprison him, and usurp to themselves all Royal Authority, as the two Houses now do, no reasonable man can affirme that they Act by the power of their Prisoner, who hath no power to give them, that by force of Armes take all power unto themselves.

The Gent saith, *The King grants Commissions dayly of Oyre and Terminer, which he cannot frustrate nor elude.* The King may revoke and discharge the Commission by his Writ, as he may remove all Judges, and place other men in their room; and any Kings death determines all the Judges Parents at *Westminster Hal*, Commission of *Oyre and Terminer, &c* And so he might dissolve both Houses in all times, by his Writ under the Great Seal, untill that in this Parliament, by his own concession, the King of his goodnesse had secluded himselfe; which goodnesse hath been full ill required.

4.E.4.39.  
5.E.4.4.  
1.Elin.Dier  
165.  
1.Mar.  
Brooks case  
497.

The

The Gentl. ~~affirmes~~, That the power  
the Parliament hath is concurrent from  
the King and Kingdom; which, he  
conceives is proved by the grant of  
Subsidies to the King by the Parlia-  
ment. The mistaking of this word  
[Parliament] hath been mischievous  
in these times to this Land, and it is  
affectedly mistaken, which makes the  
sin the greater, for the two Houses are  
not the Parliament, as before is de-  
clared, and at this time so to inculcate  
it; when all men know, that of the  
120. Peers of this Kingdom, who  
were temporal Peers before the Trou-  
bles: there are now not above 30. in  
the Lords House, and in the House of  
Commons about 200. of the princi-  
pal Gentlemen of the Kingdom left  
the House and adhered to his Majesty,  
who is imprisoned by them, shewes no  
such candor as is to be desired.

It is true, that no Tallage can be  
laid upon the people of this Land but  
by their consent in Parliament, as ap-  
pearth by the Lawes mentioned in  
the Margent; but you shall finde in  
M. Seldens learned Book, called *Mare-  
clausum*, a number of presidents in  
Henry the Thirds time for Ship-mony  
justly condemned this Parliament, to  
the which his Majesty assented; and in  
truth

4. part last.  
pag.

25. E. 1. con-  
firmatio  
chartarum  
c. 6.

34. E. 1. c. 1.  
de Tallagio  
non conce-  
dendo.

truth that Ship-money was condemn-  
ed before by the said instruments of  
25. E. 1. & 34. E. 1. *de Tallagio non con-  
cedendo. Dunsford, Englesey, and many*  
grievous Burthens were laid upon the  
people, and borne untill that memora-  
ble Princes time. But I am of opinion  
that the common Law of the Land  
did alwayes restrain Kings from all  
Subsidies and Tallages, but by consent  
in Parliament; which doth appear by  
*Magna Charta* the last chapter, where  
the Prelates, Lords, and Communal-  
ty gave the King the fifteenth part of  
their moveables. In truth it is no  
manner of consequence, because the  
King cannot take, what he pleaseth of  
the Subj. his goods, that therefore they  
have a concurrent power in Parlia-  
ment: there have been many Parlia-  
ments and no Subsidies granted, par-  
liaments may be without Subsidies,  
but Subsidies cannot be without par-  
liaments: of ancient times parlia-  
ments rarely granted any, unless it  
were in the time of forrigne Warren  
and in my time, Queen *Elizabeth*. re-  
fused a Subsidie granted in parliament,  
and in the parliament of 1. Jac. none  
were granted. The Gent. should  
make a conscience of blinding  
the people with such untimely or-  
lours,

ours to to the ruine of the King, and  
people.

A D. 3.

The Gentl. affirms, *That the sending propositions to the King, and demanding his concurrence, is scarce worth an answer, for Subjects may humbly petition for that which is their strict right of property, &c.* The propositions sent to Newcastle, are in print; wherein the two Houses are so farre from humbly petitioning, that they stile themselves his Majesties Subjects, as appears by the propositions.

That they have a strict right or property to any one of these propositions is a strange assertion, every one of them being against the Lawes now in force. Have the two Houses a strict right & property to lay upon the people what Taxes they shall judge meet? To pardon all Treasons, &c. that is one of their Propositions. Have they a strict right and property to pardon themselves? and so for all the rest of their propositions.

These propositions have been Voted by both Houses, the Kings assent (they being drawn into Bills) makes them Acts of Parliament: Hath the King

G

no

12 H.7  
20 1 I.c.  
c. 1. 1. C. r.  
c. 7.

no right to assent or dis-assent? Was the sending but a Complement? All our Law-books and Statutes speak otherwise. This Gent. and others, must give an account one time or other for such delusions put upon the people.

## AD. 4.

The Gent. saith, *They affirm not, that the Kings power is separated from his person, so as the two Spencers affirmed, &c.* His Majesties person is now at *Hotsby* under their Guards; have they not severed his power from him, when by no power they have left him, he can have two of his Chaplains, who have not taken their Covenant, to attend him for the exercise of his conscience?

15. Ed 2.  
Exilium  
Hugonis  
Calvins  
case 1 E.c.  
2. 7. pars,  
reports, 11.

For the three conclusions of the *Spencers*, do not the two Houses ad every of them? They say, his Majesty hath broken his Trust, touching the Government of his people: They have raised armies to take him, they have taken him and imprisoned him; they governe themselves; they make Laws, impose Taxes, make Judges, Sheriffs, and take upon them *omnia insignia summe potestatis*: Is not this to remove the King for misdemeanours



to reforme *per asperit*, to govern in aid of him; the three conclusions of the *Spencers*? Doe they think the good people of *England* are become stupid, and will not at length see these things?

The Gentleman saith, *They doe not separate his power from his Person, but distinguish it, &c.* His power is in his legall Writs, Courts, and Officers: when they counterfeite the Great Seal, and scale Writs with the same, make Judges themselves, Courts and Officers by their owne Ordinances against his consent, declared under his true Great Seal of *England* (not by word of mouth, letters, or ministers onely), their Seale is obeyed, their own Writs, their own Judges, their owne Courts, their own Officers, and not the Kings: The time will come when such strange actions & discourfes will be lamented.

A D. 5.

The Gentleman goes on, *We take not from the King all power of pardoning Delinquents, we only say it is not proper to him quarto modo, &c.* What doe you meane by *quarto modo*? I am sure, *Omnis Rex Angliae solus Rex & semper Rex*, can doe it, and none else; read the bookes of the Law to this purpose, collected by that reverend

Plowd, 4.  
Eliz. 213.  
the Kings  
Power and  
his person  
are indivi-  
sible.

Stanford. and learned Judge *Stanford*, from all  
 pleas 99. Antiquity to his time, who died in the  
 27 H. 8 c. last yeare of King *Philip* and Queene  
 24. Dier. *Maries* Raigne, you shall finde this a  
 163. truth undeniable; and this power was  
 never questioned in any Age in any  
 Book by any untill this time, that every  
 thing is put to the question: You Gen-  
 tlemen, who proteste the Law, and  
 maintaine the party against the King,  
 retorne at length, and bring not so  
 much scandall upon the Law, (which  
 preserves all) by publishing such incre-  
 dible things.

We hold only what the law holds: the  
 Bract. lib. 3 Kings Prerogative and the subjects Li-  
 cap 14. fol. berty are determined, and bounded, and  
 132. 1. pars admeasured by a written Law what  
 Instit. pag. they are; we doe not hold the King to  
 344. Plow have any more power, neither doth his  
 3. Eliz. majesty claime any other but what the  
 236. 237. Law gives him; the two Houses by  
 the Law of this Land, have no colour  
 of power, either to make Delinquents,  
 or pardon Delinquents, the King con-  
 tradicting: and the Army under Sir  
*Thomas Fairfax* (howbeit but Souldi-  
 ers) doe now understand that to be  
 Law, and doe now evidently see, and  
 assuredly know, that it is not an Ordi-  
 nance of the two Houses, but an act of  
 Parliament, made by the King, Lords,  
 and

and Commons that will secure them ;  
and let this Army remember their ex-  
cused fellow-Souldier , and the Law  
was alwaies so taken by all men untill  
these troubles, that have begot Monsters  
of opinion.

A D. C.

This Gentleman sayes, *The Parlia-  
ment hath declared the King to be in no  
condition to govern, &c.*

There is no end of your distinctions,  
and you professe the Law ; shew me  
Law for your distinctions, or letter, syl-  
lable, or line, in any Age in the books  
of the Law, that the King may in one  
be in no condition to govern, and  
yet have the habit of governing, and  
at such time he may *(quit)* when the  
two Houses will suffer him : the Law  
saith thus, *Vbi lex non distinguit, non  
distinguendum.*

He saies, *The King is not barred  
from returning to His Parliament,*  
as he calls the two Houses ) he  
shows the contrary, the whole City  
shows the contrary, *Nos juris consulti  
sumus sacerdotes,* (as *Justinian* the Em-  
peror hath it, in the first book of his  
editions ) and therefore know-  
ledge and truth should come from  
lips: Worthy and ingenious men

will remember, and reflect upon that passage of that good and wise man *Seneca, Non qua utitur, sed qua eundum*, follow not the wayes of the Lawyers of the House of Commons: God forgive them, I am sure the King will, if they be wise and seek it in time.

A D. 7.

The Gent sayes, *He swears that the King is our supreme Governour over all persons & in all causes, &c.* Why hath he left out the word (*only*?) for the Oath the Members now take, is that King *Charles* is now the only and supreme Governour in all causes, over all persons, and yet they keep their only Supreme Governour now in prison, and act now in Parliament by virtue of their prisoners Writ, and by a concurrent power in this Parliament, and by their own strict right and property (as the Gentleman affirms in his Answer) These things agree well with their Oath, that the King is the only Supreme Governour in all causes over all persons, This Oath is taken now in the Parliament time by all the Members of the House of the Land Commons, and is required by the Law to be taken in all Parliaments otherwise they have no power, nor

5 Eliz. ch.  
1. Caw-  
dreys case  
5 pars,  
1. 1.

This Oath  
is allowed  
by the  
common-  
Law of  
the

that colour to meddle with the publick Affairs.

This Oath being taken in Parliament, that *the King is the only and Supreme Governour in all Causes*, then it follows in Parliament causes, over all persons, then over the two Houses. Let them keep this Oath, and we shall be sure of Peace in the Land. and good Lawyers ought to desire peace both for the publicke good, and their private, and not dishonour that Noble profession, as many doe in this miserable time.

The Gent. sayes, *wee do not swear that the King is above all Law nor above the safety of his people*: neither do we so swear, but his Majesty and we will sweare to the contrary, and have sworne and have made good, and will by Gods grace make good our Oath to the world, that the KING is not above the Lawe, nor above the safety of his people: the Law and the safety of his people are his safety, his Honour and his Strength.

A D 8.

The Gent. concludes, *That Alls of Parliament are not formally binding nor compleat without the Kings assent, yet the Houses have a virtual power with*

out the Kings particular assent, to doe things in order to publique justice and Safety (viz.) In setting up the Excise, in raising and maintaining of Armes, in Taxing the people at pleasure with Fifth and Twentieth part, Fifty Subsidies, Sequestrations, Loans, Compositions, imprisoning the King, abolishing the Common prayer Book, selling the Churchs Lands, &c. all these are in order to the publick Justice and Safety.

Mr. H. P. you are of my profession, I beseech you, for the good of your Country, for the Honour of our Science perswade your selfe and others, as much as in you lies, to beleeve and follow the monition and counsell of that memorable, reverend, and profoundly Learned in the Lawes and Customes of the Land, the Lord COOKE, who writes as becomes a great and a learned Iudge of the Law (a person much magnified by the two Houses) in these words:

Peruse over all Books, Records and Histories, and you shall finde a Principle in Law, a Rule in Reason, and a Trial in Experience, that Treason worth ever produce satall and final

al destruction to the offender,  
 and neber attains to the desi-  
 red end (two incidents insepara-  
 bly thereunto) & therefore let al  
 men abandon it as the popu-  
 lar bait of the diabol & follow  
 the precept in Holy Scripture.  
 SERVE GOD, HONOUR  
 THE KING, AND  
 HAVE NO COMPANY  
 WITH THE SEDITI-  
 OUS.

### Conclusion.

I say againe, that without an Act of  
 Oblivion, a gracious Generall pardon  
 from his Majesty, the arrears of the  
 Souldiers paid, a favourable regard  
 had to tender Consciences, there will  
 be neither Truth nor Peace in this  
 Land, nor any man secure of any thing  
 he hath.

By me David Jenkins Prisoner  
 in the Tower.



# A DISCOURSE

TOUCHING

*The Inconveniencies of a  
Long-continued*

## PARLIAMENT

**A** Perpetuall Parliament is repugnant to the Act made this Parliament for a Triennial Parliament; for how can every three yeares a Parliament beginne, if this bee perpetuall, which may bee so if the two Houses please?

2. An adjournment of the Parliament makes no Session, *4 pars; institut. fol. 27.* Howbeit, before the adjournment, the KING gives His Royall assent to some Bills. *Covent. ibid.*

3. There is no Session till a Prorogation



negation or dissolution of the Parliament.

4. This Parliament, as appears by the Act for not dissolving the reof, let downe in the printed Statutes of this Plowd. Parliament, fol. 138. cannot be prorogued or dissolved, but by Act of Parliament.

There hath been as yet no Brevelation Act of Parliament in that behalfe: on 35. Bro. And therefore all the Acts of this Parliament, are Acts of one Session. Dict. 1. Marix 8.

5. All Acts of one Session relate to the first day of the Parliament, and all the Acts of such a Parliament are acts of one day: so the Act for the Trienniall, and the Act for this Perpetuall, are two Acts of one day by the Law.

6. 4 Ed. 3. cap. 8. & 36. Ed. 3. cap. 10. A Parliament is to be holden once every yeare, and more often if need shall bee; these Acts are confirmed by the Act for the Trienniall Parliament. How doth a perpetuall Parliament agree with a Parliament once every yeare, or with the intention of those Lawes? How doth a Parliament every three yeares agree with a Parliament for ever, which may be if the two Houses please?

7. The result is this; at one day in Law.

Now this Parliament two acts have passed (for howbeit the one was in 16 *Carol.* and the other in 17 *Carol.* yet both in Law are Acts of one day) the one saith there shall be a Triennial Parliament after the end of the sitting of this Parliament: The other, this Parliament shall sit for ever if they please. The one will have a Parliament with an end, the other a Parliament without an end.

1 Pars.  
Doct Bon.  
hams case.  
fo 118 B. E.  
33.50.33  
T. cassavit,  
32.  
27. H. G.  
Annuity 41.  
1. Eliz. D.  
er, 213

When an Act of Parliament is against common Right or Reason, or repugnant, or impossible to be performed, the Common Law shall controule it, and adjudg this Act to be void; they are the words of the Law.

An Act of Parliament; that a Man shall be judg in his own Cause, is a void Act. *Hobbart* Fol. 120.

Begin with Common Right. It is against Common Right, that indebted men should not pay their debts: That if any Member of the House of Commons doe any Subject wrong by disseising him of his land, or dispossessing him of his goods, or blasting of his fame, or doing violence to his person, that such persons during their lives should not be questioned by a Priviledg of Parliament, and that extended also to many other beside them.

themselves, common right doth abhor these Enormities, which a perpetuall Parliament doth beget, besides the utter destruction of all mens actions, real, personall, or mixt, who have to doe with Parliament-men, by the statute of Limitation, which confines Suites to certaine yeares.

21. Jac, c.  
16.

For Common-Reason. Parliaments were ordained for remedies to redresse publique greivances, it is against reason they should make publique and insufferable Grievances. The Law of the Land allowes no protection for any man employed in the service of the Kingdome but for a yeare, to be free from Suites, and in many Suites none at all, howbeit he be in such service, 39. H 6. but a Parliament perpetuall may prove a protection, not for a yeare, but for ever, which is against all manner of reason.

For impossibility. The death of his Majesty ( whose life God prolong ) dissolves it necessarily; for the Writ of Summons is, *Carolus Rex in hoc individuus*, and *Carolus Rex* is in this particular, *habituus colloquium & tractatum cum prelatiis & proceribus*, &c. King Charles being to have conference and Treaty with his Prelates and Peeres; *Carolus Rex* cannot have

*Colloquium*

a H. 5.  
Cook title  
Parl. 3. pars

*colloquium et tractatum*, Conference and Treaty when he is deceased, and therefore it is as impossible for any Parliament to continue as long as they please, as for a Parliament to make a dead man alive.

For Repugnancy. That which is but for a time cannot be affirmed to have continuance for ever, it is repugnant.

The end of the Act 17 *Carolus Regis*, which is to continue at pleasure, is in the said act expressed to be to raise credit for Money for these three purposes. First, for relief of his Majesties Army and People in the North. Secondly, for preventing the imminent danger of the Kingdome. Thirdly, for supply of other his Majesties present and urgent occasions. These ends are ended, the relief of that Army, the imminent danger supposed was six yeares agoe, the supply of his Majesty hath been a supply against Him; take away the end, the means thereto are to no purpose; take away the cause, the effect ceaseth; and therefore the three ends of this Act being determined, it agreeth with Law and reason, the Act should end, the Law rejects things unprofitable and uselesse.

Sir Antho-  
ny Maines  
case, 5. pars  
1. H. 4. 6.  
Littl. cap.  
Villu.

A perpetuall Parliament ( besides  
that

that it incites men to selfe-ends, destructive of the publique, of which the whole Kingdom hath had sufficient experience) will be a constant charge to the Kingdom; for that every County and Borough, who send Members to the Parliament, are by the Law to pay Wages to their Parliament-men, which to many Counties will amount above some Subsidies yearly: there are many poor Borough-Towns in each County of this Kingdom, who being to maintain two Burgesses in Parliament, will be quickly beggered, if the Parliament have no end, for all which reasons it is clear, that such long continuance of Parliaments, will instead of a remedy (which is and ought to be the proper and true ends of Parliament) become an insufferable Grievance and Oppression to all the People of the Land.

The Writ of Summons this Parliament is the *Basis* and Foundation of the Parliament. If the foundation be destroyed the Parliament falls. The Assembly of Parliament is for three purposes. *Rex est habiturus colloquium & tractatum cum Prelatis, magnatibus et proceribus super arduis negotijs, concernentibus, 1. nos. 2. Defensionem regni nostri. 3. defensionem Ecclesia Anglica*

*na.* This parliament hath overthrow  
 this foundation in all three parts,  
 1. *Nos.* The King they have Chased  
 him away, and imprisoned him; they  
 have voted no prelates, and that a  
 number of other Lords, about forty  
 in the City must not come to the  
 House, and about forty more are out  
 of Town, the *colloquium & tractatus*  
 are made void thereby. For the King  
 cannot consult and treat there with  
 men removed from thence. 2. *Defen-*  
*sionem regni nostri*, that is gone; they  
 have made it their Kingdom, not His,  
 for they have usurped all his Sove-  
 raignty. 3. *Defensionem Ecclesia Angli-*  
*cana* that is gone, that *Ecclesia Angli-*  
*cana* must be understood necessarily  
 that Church, that at the test of the Writ  
 was *Ecclesia Anglicana*, they have de-  
 stroyed that too, So now these men  
 would be called a Parliament, having  
 abated, quashed and made nothing of  
 the Writ whereby they were summon-  
 ed and assembled. If the Writ be made  
 void, All the Process is void also: that  
 House must needs fall where the Foun-  
 dation is overthrow, *Sublato funda-*  
*mento opus cadit*, the foundation being  
 taken away the work falls, is both a  
 Maxime in Law and reason.

For some years past, there is no  
 crime

time from treason to trespass, but they  
 are guilty of all treasons, Felonies,  
 Robberies, Trespases are *contra pa-*  
*cem, coronam & dignitatem Regis*,  
 against the Peace Crown and Dignity  
 of the King; as appears by all In-  
 dictments in all Ages. *Pax Regis*, the  
 Kings peace, *Corona Regis*, the Kings  
 crown, *Dignitas Regis*, the Kings dig-  
 nity, are all trod under foot, and made  
 nothing; *Pax Regis*, the peace of the  
 King is become a Warre against the  
 King, his Dignity put into Prison, and  
 the Crown put upon their owne heads.

All the Judges of England have re-  
 solved, that Noble Men committing  
 Treason have forfeited their office and  
 Dignity; *their office is to counsell the* Nevils  
*King in time of Peace, to defend him in* case 7. part  
*time of Warre,* and therefore those men 34.2. lac.  
 against the duty and end of their Dig-  
 nity taking not only counsell, but  
 Arms also to destroy him, and be-  
 ing thereof attaint by due course of  
 Law, by a tacit condusion annexed to  
 the estate of their dignity, have forfeited  
 the same, they are the words of the law,  
 and therefore they have made them-  
 selves incapable to be Members of the  
 Upper House.

*The Oppressions of the People.*

Briberies, Extortions, Monopolies, ought to be inquired after by the House of Commons, and complained of to the King and Lords, What have they done?

The House of Commons cannot by the Law commit any man to prison who is not of the said House, for Treason, Murder, or Felony, or any thing but for the disturbance of the publique peace, by the privilege of the whole Body.

They have no power by the Writ which the King issueth to elect and returne Members of that house, so to do. For the Writ for them is onely *ad faciendum & consentiendum*, to those things, whereof his Majesty shal consult and treat with his Prelates and Nobles, & *de communi consilio regni* shall be there ordained, as appears by the Writ. Here is no separate power given over the Kings people to them but only *ad faciendum & consentiendum* and in all times this hath bene expounded and restrained to that which concerned their own Members in relation to the publique Service, as they are Members of the corporate Body

4 pars inst.

23, 24, 25.



Body of the Parliament, whereof the King is the Head.

But that the House of Commons have committed any man for Treason, Murder or Felony, or for any offence that had no relation to a Member of the House of Commons, as it is against Law and reason, so no instance can be given till this Parliament.

All Questions and Tryalls where witness are examined, the Examination is upon Oath by the Law, by all our Books, Statutes, every dayes practice. Examination without an Oath is but a loose discourse, therefore the House of Commons not claiming power to give Oath have no power to examine any man.

No man shall be imprisoned by the King or his Councell, unless it be by indictment, presentment of his good and lawfull Neighbours where such deeds be done, in due manner, or by process made by Writ original at the Common Law; this Statute rehearses *Magna Charta*, p. 29. & expounds *Lex terra*, the Law of the Land there mentioned: it is Law bindes all men, and the House of Commons (for they say they are of the Kings Councell) in all points, but only against the disturbers of the service of the Parliament; and therefore

19. H. 6.  
43. 22. E:  
4. 22. 5. H.  
4. c. 8. 3. H.  
6. 46.

25. E. 3. c.  
4. Petition  
of Right.  
3 Car.

therefore the Imprisonment of severall persons who are not their Members, & for no disturbance to their Members, is utterly against the Law of the Land, and the Franchise of the Freemen of this Realme.

*Cui non licet quod minus, non licet quod Maius*; he who may not do what is lesse, may not do what is greater; they cannot commit a man for murder or Felony, much lesse for Treason.

8 pars,  
Cook 120  
27. H. 6 8.

No Court can fine and imprison, but a Court of record, the House of Commons is no Court of Record, the House of the Lords where the King is in person, his Nobles and his Judges, and Councell at Law, the Masters of the Chancery assisting, is a Court of Record, and that is the Court of Parliament, where the *Colloquium & tractatus* is. The House of Commons may present Grievances, grant or not grant Aides, consent or not consent to new Lawes, but for fining or imprisoning any but as aforesaid, is but of a late date, and no ancient usage: They have no journall Book, but sithence *Edw. 6. line 6. Hen. 8. cap. 15.* doth not prove the House of Commons to be a Court of Record, it mentions only to be entred on Records in the Booke of the Clerke of the Parliament

21. E. 4. fol  
46

if any members depart into the Count Commons  
 trey. There is no Journal but sithence in Parl a-  
 Law. 6. time and that is a Remem- ment ne  
 brance or memoriall, as 12. H.4. 23. font Judg-

The whole Parliament is one corpo- es.  
 rate Body, consisting of the Head and  
 three Estates: The Court is onely  
 there where the *Consilium & tractatus*  
 is, where the consule and treaty is with  
 the King, which is in the House of  
 Lords only.

The House of Commons claime not 14. H. 8. 3.  
 to examine up- n Oath any Man; no 36. H. 8.  
 Court can be without a power to give Dier 60.  
 in Oath, Courts Baron, Court of Pi- 4. par. inst  
 cewards, County Court, may and doe cap. 1  
 give Oath: no Court can be without  
 a power to try, no triall can be without  
 Oath; and therefore the house of Com-  
 mons not claiming power to give an  
 Oath, can bring no matter to trial, and  
 consequently can be no Court.

The behaviour of the Commonns at  
 a Conference with the Lords; the  
 Commons are alwaies uncovered, and  
 standing, when the Lords sit with their  
 hats on, which shewes they are not  
 Colleagues in judgment: for fellow-  
 judges owe no such reverence to their  
 Companions.

When was ever Fine imposed by the 11. H. 4. c.  
 House of Commons estreated in the 11.  
 Exche-

Exchequer? The ejecting of a Member; who hath sitten, is against the Law: for they cannot remove a man out of the House unduly returned, much lesse a man returned duely.

2. H. 4. c. d.

1. H. 5. c. 1.

8. H. 6. c. 7

23. H. 6.

c. 15.

By these Lawes it appeares, that if any undue returne be made, the person returned is to continue a Member, the Sheriffes punishment is 100. l. one to the King, another to the party that is duly elected, Imprisonment for a year without Bail or Mainprise; and that person who is unduly returned, shall serve at his own charge, and have no benefit at the end of the Parliament by the Writ *De solutione feodorum Militum, Civium & burgensium Parliament*. And the triall of the falsity of the return, is to be before the Justices of the Assizes in the proper County, or by action of Debt in any Court of Record. This condemnes the Committee for undue Elections, which hath beene practised but of late times; for besides these Lawes, it is against a Maxime in the Common-Law: an Averment is not receivable against the returne of the Sheriffe, for his Returne is upon Oath, which Oath is to be credited in that Sute wherein the Returne is made.

3 Ed. 4. 20

5 Ed. 4. 41

The said Statutes condemne and make

make those Members no Members,  
which were not resident in the County  
and Boroughs, for which they were  
elected, at the time of the teste of  
the Writ of the summons of the Par-  
liament, and any abusive practice of  
these times to the contrary is against  
the Law, and ought not to be allowed.

*Affault upon Parliament-men.*

If a Parliament-man, or his Meni-  
al Servant be assaulted, beaten, or  
wounded, in the Parliament time,  
proclamation shall be made where the  
deed is done, that the Offender shall  
render himselfe to the Kings Bench,  
within a quarter of a year after pro-  
clamation made, & the offence there  
to be tryed, for Default of appearance  
the Offender is declared, attainted of  
the Misdemeanor, and it is accorded that  
hereafter it be done likewise in the  
like case.

5 H.4.c.6.  
11. H.6.c.  
11.

Serving of processe upon a Lord of Bogo de  
the Parliament punished in the Clare 18.  
Lords House.

B.3.4.pars

Serving of processe upon *Thornby* inst.fol.24  
inquired of in the Chancery, and there 10 Thorn.  
the Offenders were convicted. sbyses case,

The premises prove, that breaches Clerk of  
of privilege of Parliament may be the Parl.  
punished *ibid.* 10. H.3

punished else were then in Parliament.

Vpon all this Discourse, it is easie to decerne what fruits may be expected from this Parliament, continuing as long as the two Houses please, and that there is no safety for this common-wealth, but by the observations of their antient Franchises, customes, and Lawes.

Conclusion.

**I** Say againe, that without and Aft of Oblivion, a gracious generall pardon from his Majesty, the arrears of the Souldiers paid, a favourable regard had to tender consciences, there will be neither Truth nor Peace in this Land, nor any man secure of any thing he hath.

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AN

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AN  
APOLOGY  
FOR THE  
ARMY,

Touching the eight  
Quæres, &c.

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LONDON,  
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AN  
A P O L O G Y  
FOR THE  
A R M Y.

THESE Treasonable and insolent  
*Queries* make the Army the hou- Br. & on, fol.  
112.  
 ses Subjects, and not the Kings. *None*  
*by the Lawes of this Land can in this* Stem ord.  
fol. 2  
*Kingdome have an Army but his Ma-*  
*jesty.*

It appeares, the Army doth now  
 evidently perceive, that they were  
 mis-led by the specious pretences of  
*Salus populi*, the maintenance of the  
 Kings Honour, and of the mainte-  
 nance of the Lawes of the Land, and  
 Liberties of the Subject, to take up  
 Armes against their naturall Lige  
 Lord and Sovereigne the King: the  
 people is the Body, the King is the  
 Head; Was the Body safe when the  
 Head was distressed and imprisoned? Mag. Chart.  
c. 1. & ult.  
 For Lawes and Liberties, have not the  
 prevailing party in the two Houses de- All the Act  
concerning  
the King,  
Church, and  
Church-  
men.  
25. Ed. 1.  
cap. 1.  
 stroyed above an hundred Acts of Par-  
 liament, and in effect *Magna Charta*,  
 & *Charta de Foresta*, which are the  
 Common lawes of the land? Doth

Excise, the Fifth and Twentieth parts, Meal-money, and many more Burdens which this Land never heard of before, maintaine the Liberties of the people? You and that party of the two Houses, made the Army by severall Declarations before Engagement, believe that you would preserve the Kings Honour and Greatnesse, the Lawes and Liberties of the people. The Army and the whole Kingdome now *facta vident*, see your Actions, and have no reason longer to believe your Oathes, Vowes, and Declarations; and since that party in the two Houses refuse to performe any thing according to their said Oathes, Vowes, and Declarations, the Army and the Kingdome may and ought, both by your own principles, and the Lawes of the Land, to pursue the ends for which they were raised. And so your first *Quære* is resolved; whereby it is manifest, that specious pretences to carry on ambitious and pernicious Designs, fix not upon the Army, but upon you, and the prevailing party in both Houses.

3 par. Inst.  
f. 12. 39. El.

2 Lac. ibi. 3.

& 3. E. 6. c. 3.

11. M. 7. c. 1.

*The solution of the second Quære.*

The Army, to their eternall honour, have freed the King from imprisonment at *Windsor*. It was High Treason

to imprison his Majesty : To free his Majesty from that imprisonment was to deliver him out of Trayterous hands, which was the Armies bounden duty by the Law of God and the Land. That party refused to suffer his Majesty to have two of his Chaplaines for the exercise of his Conscience, who had not taken the Covenant; free accessse was not permitted; doth the Army use his Majesty so? all men see that accessse to him is free, and such Chaplaines as his Majesty desired are now attending on his Grace : Who are the guilty persons, the Army, who in this action of delivering the King, act according to Law, or the said party who acted Treasonably against the Law? Who doth observe the Protestation better, they who imprison their King, or they who free him from prison?

That this Army was raised by the Parliament, is utterly false. The Army was raised by the two Houses upon the specious pretences of the Kings Honour, common safety, and the preservation of Lawes and Liberties; which how made good, hath beene shewed before, and all the people of the Kingdome do finde by wofull experience.

The two Houses are no more a Parliament, than a Body without a Head or a Man. The two Houses can make no Court without the King; they are no Body Corporate without the King; they all, Head and Members, make one Corporate Body. And this is so clear a Truth, that in this Parliament, by the Act of 17. *Carols* it is declared, That the Parliament shall not be dissolved or prorogued but by Act of Parliament: but the two Houses may respectively adjourne themselves. Two Houses and a Parliament are severall things, *cuncta fidem vera faciant*; all circumstances agree to prove this truth. Before the *Norman* conquest, and since to this day, the King is holden *Principium, caput, & Finis*, that is, the beginning, Head, and chiefe end of the Parliament, as appeareth by the Treatise of the manner of holding of Parliaments made before the *Norman* Conquest; by the Writ of Summons of Parliament whereby the Treaty and *Parler* in Parliament is to be had with the King only, by the Common Law, by the Statute-Law, by the Oath of Supremacy taken at this, and every Parliament, it doth manifestly appeare, that without the KING there can be no colour of a Parliament.

How

1. H. 8, 1.  
25 H. 7, Diet  
60, 4 pars  
Instit. p. 1, 3  
22, 14.  
16 R. 2 c. 1.  
2 Eliz. c. 2.  
17. Carol.  
The Act for  
the continu-  
ance of this  
Parliament.

4 par. Instit.  
p. 13.  
4. par Instit.  
P. 4.9  
5. Eliz. c. 1, 2

How many Votes have they revo-  
 led in one Session, yea, and Bills?  
 Was there ever the like done? Nay,  
 is not the constant course of Parlia-  
 ments violated and made nothing  
 thereby? They are guarded by armed  
 men, divide the publike Mony among  
 themselves, and that party endeavours  
 to bring in a Forraigne Power to in-  
 vade this Land againe. If they be no  
 Parliament, as clearly they are none  
 without his Majesty, they have no pri-  
 viledges, but do exercise an Arbitrary,  
 Tyrannicall and Treasonable power  
 over the people.

By the Law of the Land, when 7 E. 4. 20,  
 Treason or Felony is committed, it 8 E. 4. 3  
 is lawfull for every Subject, who sus- 9 E. 4. 27  
 pects the Offendor, to apprehend him, 4 H 7. 8  
 and to secure him so that Justice may 27 H 8. 23.  
 be done upon him according to the  
 Law.

You say, the disobedience of the  
 Army is a sad publick presiden:; like  
 to conjure up a spirit of universall dis-  
 obedience. I pray object not that con-  
 juring up to the Army, whereof you  
 and the prevailing party in the House  
 are guilty, who conjured up the spirit  
 of universall disobedience against his  
 Majesty, your and our onely Supreme  
 Governour, but you, and that party in

the two Houses, and even then when the House of Commons were taking and did take the said Oath of Supremacy? For the Covenant you mention, it is an Oath against the Lawes of the Land, against the petition of Right, devised in *Scotland*, wherein the last Article is to maintaine the Reformed Religion in the Church of *Scotland*: And certainly there is no Subject of the English Nation doth know what the Scottish Religion is. I beleve the Army tooke not the Covenant. No man by the Law can give an Oath in a new case without an Act of Parliament; and therefore the impostors thereof are very blameable, and guilty of the highest Crime.

The Writer of these *Queres* saies to professe the Lawes; Let him declare what Act of Parliament doth justify the tendering, giving, or taking of the said Oath: he knoweth there is none, he knoweth that all the parts of it are destructive of the Lawes and Government to maintaine which the Law of Nature, and the Law of the Land hath obliged them. The Oath of the Covenant makes the Houses supreme Governours in causes Ecclesiastical; the oath of Supremacy makes the King so: and yet both taken by the same

2 par. Coll.  
of Ord. pag.  
803.

3 par. Inst.  
fol. 165.  
Petition of  
Right, 3.  
Car. 2 pass.  
Inst. 719.

same persons, at the same time. What credit is to be given to persons who make nothing of Oathes, and contradict themselves? How do the Covenant & the Oath of Supremacy agree? How do their protestation and the Covenant agree? How do their Declarations and Oaths agree? The Lord be mercifull to this Land for these Oaths.

It is a sad thing to consider that so many Gentlemen who professe the Lawes, and so many worthy men in both Houses should be so transported as they are, knowing that the Lawes of the Land from time to time, and in all times, are contrary to all their actions, and that they yet should amuse themselves and the people with the word Parliament without the King and with the Covenant; whereas they know they are no Parliament without His Majesty: And that English men throw out the King while should swear a Covenant to preserve the reformed Religion of Scotland, in Doctrine, Worship, Discipline and Government, which they do not more know than the Doctrine, Worship, Discipline and Government of Plessers John is a *caricature*; if they consider it, they cannot but discern that this is a high despatch and impious madnesse.

Hs.

Be

Be wise in time: Without the King and the Lawes, you will never have one hour of safety for your Persons, Wives, Children or Estates. Be good to your selves and to your posteritie; apply your selves to be capable of an Act of Oblivion, and of a generall Pardon, and to be able and willing to pay the Souldiery, and to allow a reasonable liberty for mens consciences; and God will bleſſe your endeavours; and the people (to whom you are now very hatefull) will have you in better estimation.

*The third Question is thus answered.*

You resemble the Army to Jack Cade and his complices; and you cite the Act of Parliament of 31. Hen. 6. cap. 1. And that it may appear who acts the part of Jack Cade, you and that party in the two Houses, or the Army, I think it necessary to set down the said Act in words at length as followeth.

First, *Whereas the most abominable, Tyrant, horrible, odious & errant false Traytor John Cade calling and naming himself sometime Merchant, sometime Capt. of Kent, which name, fame, acts and scates are to be removed out of the speech and minds of every faithfull Christian man perpetually, falsely and*



and traiterously purposing, and imagining the perpetuall destruction of the Kings said Person, & finall subversion of this Realm, taking upon him Royall Power, and gathering to him the Kings people in great numbers, by false subtile imagined language, and seditiously making a stirring Rebellion & Insurrection, under colour of Iustice, for Reformation of the Lawes of the said King,, robbing, beating and spoiling great part of his faithfull people.. Our said Sovereigne Lord the King considering the premises, with many other which were more odious to remember, by the advice and consent of the Lords aforesaid & at the request of the said Commons, and by authority aforesaid, hath Ordained and established that the said John Cade, shall be reputed, had, named, and declared a false Traytor to our Soueraigne Lord the King; and that all his tyranny, acts, feats and false opinions shall be voyded, abated, nulled, destroyed, and put out of remembrance for ever: and that all Indictments, and all things depending thereof, had and made under to power of Tyranny, shall be likewise void, annulled, abated, repealed, and holden for none: and that the blood of none of them be thereof defiled nor corrupted.

ted, but by the Authority of the said Parliament clearly declared for ever; and that all Indictments in times coming, in like case under power of Tyranny, Rebellion and Stirring had, shall be of no Record nor effect, but void in Law; and all the petitions delivered to the said King in his last Parliament holden at Westminster, Nov. 6. in the 29. of his reigne, against his mind, by him not agreed, shall be taken and put in oblivion, out of remembrance, undone, voided, annulled, and destroyed for ever, as a thing purposed against God and Conscience, and against his Royall Estate and preeminence, and also dishonourable and unreasonable.

Now we are to examine who hath trod in the steps of Jack Cade, you and the present prevailing party of both Houses took upon them, and do take all the Royall power in all things; so did Jack Cade; as appears by the said Act; the Army do not so: They who imprison the King purpose to destroy his person (our imprisoned Kings always fared so) Jack Cade did likewise so purpose; The said party in the two Houses made a stirring under colour of Justice for reformation of the Lawes; so did Jack Cade; The Army do not so

but

\* Edward 1.  
Henry 6.  
Richard 2.

but desire that the Lawes should be observed: *Jack Cade* levied war against the King, The Army preserves Him: *Jack Cade* dyed a Declared Traitor to his Sovereign Lord the King; this army might have lived to have the glorious true Honor of being restorers of their King.

*Simon Sudbury* Archbishop of *Canterbury* was murdered by *Jack Straw* *William Laud* Archbishop of *Canterbury* was likewise murdered by that party of the two Houses, for that an Ordinance by Law cannot take away any mans life, and his life was taken away by an Ordinance of the two Houses, the army had no hand in it. Many misled by *Jack Straw*, perceiving his Trayterous purposes, fell from him: and as that was lawfull, just, and honourable, so is it for this Army to adhere to their naturall King, and so endeavour to settle the Kingdome again in the just Lawes and Liberties thereof: *London* did then right worthily adhere to the King, and the Lawes, and so to *Jack Straw* and his seditious pretences, and it is hoped they will now so do. By this it appears, that the Gentlemans Discourse touching *Jack Cade*, fittens altogether on his party, and against the Army.

25 Ed. 3. 4.  
28. Ed. 3. 31  
Petition of  
Rights.

To the IV. which is resolved thus.

The Arreares of the Army (howbeit it is the least thing they look after) yet being not paid them, it is by the Law of the Land a sufficient cause to leave and desert that party in the Houses: a person who serves in any kinde, and is not paid his Wages, the desertion of that service is warrantable by the Lawes of the Land: You say, the Houses will reforme all things when the Army doth disband. Who will believe it? Will any believe that the settling of the Presbytery will do it? Will any believe that his Majesty will passe the propositions sent to Him to *Newcastle*? Will any man believe that this Kingdome will ever be quiet without his Majesty and the ancient and just Lawes? Can the Members of the Army conceive any of them to be safe in any thing without a pardon from his Majesty? Have they not seen some of their fellowes hanged before their eyes, for actions done as Soldiers? Shall the Kingdom have no account of the many Millions received of the publique Money, Will the Members of the Houses accuse themselves? Shall private and publique Debts be never paid? Shall the Kingdome lie ever under burthens of oppression and Tyranny?

Fitz. N, B

159

9 Ed. 4. 20.

38 H. 6. 27.

23. Eliz

Dier, 369.

ay? There is no visible way to remedy all these Enormities but the power of the Army.

*To the V. which is solved thus.*

The Kingdom hath better assurance of Reformation from the Army, than from the Houses, for that in their Military way they have been just faithfull and honourable, they have kept their words; That party of the Houses have been constant to nothing but in dividing the publique Treasure among themselves, and in laying Burdens upon the people, and in breaking all the Oathes, Vowes, and promises they ever made; As the Army hath power, so now adhering to the King, all the Lawes of God, Nature, and Man, are for them, their Armies are just, and blessed; and the King is bound in justice to reward his Deliverers with honour, profit, and meet Liberty of conscience.

2 & 3 H. 6.  
c. 2.  
11 H. 7. c. 1.  
Calvins  
case, 7. pars.  
Cook, fol. 12

*To the VI. Quære.*

All the sixth Quære containes calumnies cast upon the Army; the new Elections are against all the Lawes mentioned in the margin, and are against the Election of the old Members, and by this it may be judged, what a House of Commons we have, By the said Lawes it appeares, that if any

11 H. 4. c. 1.  
1. h. 5. 2. 1.  
2. h. 6. c. 7  
23. h. 6. c. 15.

any undue returne be made, the person returned is to continue a Member, the Sheriffes punishment is two hundred pounds, one to the King, and the other to the party that is duly elected; Imprisonment for a yeare without Bail or mainprize, and that person who is unduly returned shall serve at his own charge, and have no benefit at the end of the Parliament, by the Writ *De solutione Militum, Civium, & Burgensium Parliament*. And the trial of the falsity of the returne, is to be before the Justices of Assizes in the proper county: or by action of Debt in any Court of Record. This condemnes the Committee for undue Elections, which hath been practised but of late times, for besides these Lawes, it is a Maxime of the Common Law, an averment is not receivable against the returne of the Sheriffe, for his Returne is upon Oath, which Oath is to be credited in that Suit wherein the Returne is made.

3.Ed. 4. 30.  
5.Ed. 4. 43.

The said Statutes condemne Elections of such men who were not resident and dwelt in the County or Burrough for which they were returned; and any abusive practise of late times on the contrary, is against the Law, and ought not to be allowed.

## To the VII. Quere.

The Quereist saith, that the Votes of the Independents in the Houses were arbitrary, exorbitant, and irregular, and that they disposed and singled more of the common Treasure than others; That whole Quere, I believe is false and slanderous; and the Author ought to make it good, or else to undergo the Law of Talsia: 17. Ed. 6. c. 17. which is to suffer such punishment failing of his poof, as the accused should in case of poofe made.

## To the VIII. Quere

This Quere is all minatory and threatening, and the contrary of every part is true, by the deliverance of the King and Kingdome from the bondage of that party in the 2 Houses by the Army, their renown will be everlasting, they secure themselves, they content and please the Kingdome, City, and Countrey, as appears by their confluence to see his Majesty and the Army, and their acclamations for his Majesties safety and restitution, all which doth evidence to every one of the Army, how acceptable the intentions of the Army are to the people of this Land, who have been so long intrahled.

Sir Thomas Fairfax, let your Worthinell

(169)

thineſſe remember your extraction and your Ladies, by the grace and favour of the Prince, to be in the ranke of Nobility, Remember what honour and glory the preſent Age and all poſterity will juſtly give to the Reſtore of the King to his Throne, of the Lawes to their ſtrength and of the afflicted people of this Land to peace: Let the Colonels and Commanders under You and likewise your Souldiery, reſt aſſured, that they ſhall not only ſhare in the renowne of this Action, but alſo ſhall have ſuch remuneration as their haughy Courage and ſo high a virtue doth deſerve. This his Maieſty can and will do, the Houſes neither will nor can: and God bleſſe you all and proſper you.

**I** Conclude all, as I have alwayes done. without an Act of Oblivion, a generall pardon, the arrears of the Souldiery paid, and a regard to Liberty of conſcience, this Kingdom will certainly be ruined.

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Judge

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# Judge Jenkins P L E A

delivered into the Earl  
of *Manchester* , and the  
Speaker of the House of  
COMMONS,

Sitting in the CHANCERY at  
WESTMINSTER,

Which was read by their Command in  
open Court, the 14<sup>th</sup> of *Febr.* 1647.  
And there avowed.

By DAVID JENKINS Prisoner in NEWGATE.



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L O N D O N,  
Printed In the Yeare, 1648.

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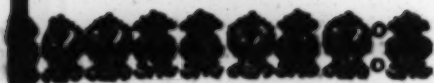
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Judge Jenkin's

# PLEA

Delivered in to the

Earle of *Manchester*,

and the Speaker of the

House of COMMONS, sit-

ting in the CHANCERY

at WESTMINSTER.

I Have been required to appear in the Chancery the Twelfth of this instant February, before Commissioners appointed by the two Houses for the keeping of their Great Seal, and managing the Affaires of the Chancery.

I cannot, nor ought, nor will submit to this power; I am a Judge sworn to the Lawes. The Law is, first, that this Court is *Coram Rege* in  
Can-

4 parts inst.  
fol 79  
8 E 4. fol 5  
9 E 4. fol 15

*Cancellaria*, Secondly the Chancellor  
or Keeper of the great Seale is by deli-  
very of the Great Seale to him by  
the KING, and by taking of an  
Oath.

The Oath followeth in these  
words.

43 parts inst.  
fol 88  
10 R 2 rot.  
Parliament 8

1. *Well and truly to serve our Sovereign  
raigne Lord the King, and his people in  
that Office.*

2. *To do right to all manner of people  
poor and rich, after the Law, and cus-  
tomes of this Realm:*

3. *Truly to Counsell the King and his  
Counsell to conceale and keep.*

4. *Not to suffer the hurt, or disheri-  
ting of the King, or that the rights of  
the Crown be decreased by any means  
a sfarre as he may let it.*

5. *If he may not let it, he shall make  
it clearly and expressly to be knowne to  
the King with his advice and coun-  
sell.*

6. *And that he shall do and purchase  
the Kings profit in all that he reasona-  
bly may as God him help, and the com-  
mends of Gods booke.*

The said Commissioners among o.  
 have Imprisoned their King,  
 have declared to the Kingdome that  
 they will make no Addresses or Ap-  
 plications to him, nor receive any  
 from him.

Declar. 17

Jan. 1647

have counterfeited a new great Seal,  
 and after destroyed the true old great  
 Seale which belonged by the Law to  
 the Kings custody.

Articuli Sup:  
 charters c. 5

These Commissioners have had no  
 Seale delivered to them by his Maje-  
 sty, have taken no such Oath, or full  
 Oath, and for these evident rea-  
 sons grounded upon the fundamen-  
 tals of this Land, these Commis-  
 sioners have neither Court, Seale, or  
 Commission, and therefore I ought  
 to be against the Lawes, against my  
 knowledge, and against my conscience  
 to submit to their power.

To affirme that they maintaine  
 the Kings power and authority in re-  
 spective to His Lawes (as they often do)  
 and restrain only his Person is  
 wronge.

They must be remembered that the  
 House of Commons this Parliament  
 were in charge to Mr. Solicitor upon  
 the prosecution of the Bill of attain-  
 der against the Earle of Strafford, to Mr. Solicitor  
 to declare the Law to be, that *Machius* - pag. 37-  
 tion

(175)

tion of war against the Lawes of  
Kingdome; is against the King, they  
cannot be severed.

Mr. Pym  
Pa. 169

Mr. Pym had in charge likewise up-  
on the same prosecution to declare,  
That the King and his people are obli-  
ged one to another in the most relation  
tion, he is a Father, & the child to him  
is called son & father, he is the Head  
of the Common-wealth, they have the  
same interests, they are dependent on  
their condition be it good or evil; he  
is the Head, they are the body, there is  
such an incorporation as cannot be dis-  
solved without the destruction of both.

20. H. 7. fol.

7.

8. H. 7. fol.

12.

1 Ed. 5. fol.

3.

4. Ed. 4. fol.

25.

5 Ed. 4. fol.

29.

This open Drink out Lawes, and the  
Law of this Land: In the presence  
of Mr. Solicitor, and discourse of Mr.  
Pym directed by the House of Com-  
mons are contained the true rights, li-  
berties and lawes of the people deli-  
vered from our Ancestors in all ages, &  
wherein there is nothing void but is  
agreeable to the Law, and is a nec-  
essary and usefull book to be perused  
and followed by all; which book was  
published by Order of the House of  
Commons. If the doctrine of this  
book had been followed from his time  
so miserable as we are now, had  
these great evils ensued, for the which  
the Lord mourns.

In

In this Month of *February*, six years  
now past, the onely Difference be-  
tween his Majesty and the prevailing  
party in both Houses was touching the  
power of the *Militia*, which in plain  
*English* is, Power over Sea and Land :  
this was the sole quarrell : the King  
and his Progenitors have had it in all  
Times, the Lawes have fixed it upon  
them, they have used it for the Weal of  
the people : none of the Subjects ever  
had it or claimed it; the Lawes deny  
it them; for the time they have had it,  
our pressures have bin miserable.

Collect, of  
Ordinances;  
1 part  
fol, 66 67  
81

His Majesty hath a numerous Issue,  
and so hath his Father : many great  
persons of *England*, and *Scotland* are  
of the Bloud Royal, and all the Kings  
of *Christendom* are of the same Bloud,  
so long as the Lawes last, or any of the  
said persons, or their Descendants be  
living, this people shall have neither  
peace nor profit; but all the confusions  
that are imaginable will attend them.

And therefore (at length) be good to  
your selves, restore our King, receive  
from Him an Act of Oblivion, a ge-  
nerall pardon, Assurance for the Ar-  
rears of the Souldiery, and meet satis-  
faction to tender consciences.

*February 12.* By *David Jenkins*,  
1647. Prisoner in Newgate.

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THE  
ANSVVER  
OF  
Iudge Ienkins,  
TO THE  
IMPVTATION  
PVT UPON HIS  
PLEA  
IN  
CHANCERY

Which was read in open Court the  
14 of Febr. 1647.

And avowed by *David Ienkins* Prisoner  
in *Newgate*



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Printed in the Yeare 1648.

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THE  
ANSWER  
OF  
*Judge Jenkins,*  
TO THE  
IMPUTATION  
Put upon him in  
CHANCERY.

I Have no disposition, nor ever had, to be known by any publique Writing: these miserable Times, which fill many mens mouthes, and most mens cares with notorious Untruths, thereby to blast and destroy the Kings Sacred Majesty, his Lawes and Government, and to bring in a confusion; enforceth me at this time (who formerly have written nothing but for the publique)

to let the World know how unjustly the Pamphleter of this Wecke, Licensed by our Reformers, hath traduced me touching a Suit commenced in their Court of Chaucery against me, by one M. Eruly a Wiltshire Gentleman, touching the Estate of one M. Thomas of Glamorganshire: the Truth whereof is as followeth.

M. Thomas, whose Father and my Grandfather were two Brothers, about seventene yeares past made his Will, and declared by the same his Son (being then of very tender yeares) a Ward to his Majesty, and made him Executor, and my selfe during his minority, (referring to his Wardship,) to administer his Estate personall and testamentary, and to be accountable to his Son when he came to Age: And seventene yeares sithence the Father died.

This Estate consists in a Stocke of Sheepe, so disposed by me as the number are yet continued, and for the number and condition, they were at their delivery backe, to be made as good by those persons who had the charge of them, as they were when they were received.

The rest of the Estate (for any considerable part) was in Mortgages of Land,

Land forfeited in the life of my young Cousin *Thomas* for many of them, & many absolutely purchased by me in his name in his life time, for the which I am not yett payd.

The Land descended, and ought upon *Sir Edward Thomas*, my coulin & Heire at Common-Law; so that *Mr. Eruley*, the Plaintiffe in *Chancery*, hath no colour for the Land: For my young Cousin dyed without issue about 17. yeares old, and could not dispose of the Inheritance of any Land, by a pretended Will. The stocke of Sheepe remains, if the Plaintiffe and the *Reformers* have not Plundered them, for the Money it came all to the Court, it was to satisfie the King for the Marriage.

The colour the Plaintiffe hath, is this; After the death of my olde Kinsman *M. Thomas*, by undue means the young Gentleman was married to *M. Eruleys* Daughter, in a way of Ravishment, being both children, without one penny payd, or consent of Friends or Kindred, For the which a Suit of Ravishment depended against *M. Eruley* and others in the Court of *Wards*.

The young Gentleman dyed about 17. yeares of age, thence these confusions

sations without issue; and some hours before my young Cousins death (who dyed of a pestilent Feaver) Mr. *Ernest* pretends a Will made by him, and that he made his Wife (*M. Ermeley* Daughter) his Executrix: His said Wife dies soon after, & is pretended to make a Nuncupative Will, and to make her Father (*M. Ernest*) her Executor, and so pretends as Executor of an Executor of an Executor: which pretended Wills, he saith he hath proved in the Courts of his Friends, the *Reformers*.

Whether such wills were made or no, must receive an equal examination, and of what validity they are, being pretended to be made by children *in extremis* if made at all? And whether an Executor of an Executor of an Executor can maintaine an account by the Law of the Land? And whether (I being Executor during the Minority, viz. the Wardship) my young Cousin could make such a Will as is pretended, he being no Executor till his full age.

The age touching Wills, the Law of this Land determines to be 21. years, and before that age at common Law an use could not be devised. For Wills touching goods and chattels, our Law  
for

for many ages hath left the same to the  
 decision of the Civill and Canon  
 Lawes, in the Bishops Courts: That  
 Law, (as *Justinian* hath it in the se-  
 cond Booke of his *Institutions*, the 12.  
*chap.*) is, *Impuberi non licet testari*: this  
*Pubertas* begins at 14. it is *Plena pu-*  
*bertas* at 18 yeares of age: The que-  
 stion is, whether this *iur testandi* is in  
*pubertate plena*, or *pubertate incepta*.  
*Pigots Case*, 5. part of *Cookes Reports*.  
 the Doctors affirmed, that 17 yeares of  
 age was a full age as to an infant Exe-  
 cutor to dispose of Goods: this opi-  
 nion hath been by others since de-  
 nuyed. Sir *Edward Cook*, 11 part, *Last*.  
*sect.* 123. saith, He must be 10. which is  
 the time of *plena pubertas*, 2. Hen. 4.  
 12. an infant of 18. yeares of age may  
 be a devisee. Sir *Jo. Doderidge*  
 in his booke called, *The Office and*  
*Duty of Executors*; which they say is  
 his, and it is a learned and laborious  
 Treatise, fol. 347. delivers that this  
 opinion of 17. yeares, for that ability  
 in an infant, hath been reported other-  
 wise. This latter opinion comes nee-  
 rer the Common Law, and the Sta-  
 tute Law of the Land; which Com-  
 mon Law, and Statute Law, gives in-  
 fants no power by deed or Will to  
 make any disposition of any thing,

they have, before they be 21 yeares of age.

It seems also more reasonable, because infants at 18 yeares have by the intendment of Law, as they grow in yeares, more use of reason, to discern what is fit for them to doe and act. And for a meere stranger to sue in a Court of Conscience, {who pretends by such Wills of infants (the infant Husband being ravished) against the will of the Kindred of the deceased, who dy.d six yeares sithence without issue (being 17 yeares of age) and that any part of his part of his estate should go that way by a course of Equity unless the Law be for Mr. *Erastley*, who heyd not a penny with his daughter, and who would have the Husband of his daughter bring him a portion, by his pretended title of an Executor of an Executor of an Executor, viz. of an infant the Executor of another infant, the Executor of a third person, seems very strange.

The said Licensed Historiographer of theirs, hath published the 16 of this present Month of February, 1647. that I out of a desire to keep the Estates have in a suite in the Court of wards, in my Cousins life time, pleaded to the Jurisdiction of that Court. It is true, I did



did so ; for I conceived that the Estate would be unsafe in Mr. Erkeley's hands, and I was willing to preserve it till my young Cousin came to be of age, to dispose of it himselfe, according as I was trusted.

The Law being, that the Court of Wards had no jurisdiction over the personall estate (for then the Marriage was paid for to the King, and all due to the King ascertained.) It is true, that that was insisted upon as was just, for to preserve the Estate from Mr. Erkeley, who would have made what account he pleased to my Cousin at his full age : And this is the truth of that business.

32.H.8. c.  
46.4. pars  
inst. vol. 201.  
202.

That I declined not the Jurisdiction of the Chancery, to keepe an Estate in my hand, appeares, by my declining long sithence the power of the House of Commons to examine me ; and the Reformers have all my Estate : What would Mr. Erkeley have, when they [the Reformers] have all already ; or can have from me, if he had any colour ?

I desire the good people of this City to observe what notorious Vntruths their Licensed Historiographers publish, to delude the people : In this particular case they publish.

First,

First, *That the Suit against me, is in the behalfe of an Orphan: M. Earnley (who is Plaintiffe in their Court) is a writshire Gentleman, at the least of 50. years of age, there is their Orphan.*

Secondly, *That I made a speech to the people at the Hall door, that the questioning of me for what I had done for the KING, was the gall; and that the Iudges had no power to try me, the KING being absent; Another notorious untruth! For I protest to God, all that I said was onely this, God preserve the KING and the Lawes.*

Thirdly, it is said that comming to the Barre, I stirred not my Hat; All the Lawyers then at the Barre were uncovered; wherefore I held it a civility, to be also uncovered; and so I was, as they all know.

Fourthly, *That the E. of Manchester should say, I received a great estate in money, of the Orphans estate; As there is no truth in it, so it is most untrue that the said Lord so said (as all men present can testifie.) The truth is, they care not what they do, what they say, what they swear, nor what they write; Witnes the Declaration of a prevailing party of the H. of Cōmons, of the 11<sup>th</sup> of this*

this instant *February*; who contrary to the Oath of Allegiance, the Oath of Supremacy, the Protestation, their solmne League and Covenant, their Declarations to make His Majesty a glorious King, fearfull to his enemies, and beloved of his Subjects; and yet now, after 22. yeares, they would insinuate to the people, that this King, whom they have so much magnified, hath peysoned his own Father.

Falsly; it is a publike notorious untruth. "That the Parliament hath published a Declaration against the King, of the 11. of this instant *Feb.* whereas it is well known to be the Declaration of the prevailing party of the House of Commons only, without the Lords; and so they would make that prevailing partie only to be the \* Parliamtent.

Let the people of *England* beleve their five senses; how it was with them seven yeares agoe, and before, during his Majesties Reign; how this Kingdom abounded then with Peace, Plenty, and Glory, to the admiration & envy of other Nations; & now let them consider and judge by their Senses, thence those men (whom nothing would satisfie, but all Power both by Sea and Land, which in truth is the

Regality

\* Their licensed Historiographer who published this, is called the Kings weekly post from Wednesday Feb. 7 to Wednesday the 16 of Feb. 1647

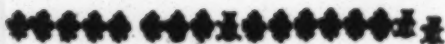
regality & kingship, which they call the *Militia*) have usurped the said Power Regal, whether they have not by Impostures and Delusions, diffused among the people by themselves and their Agents, brought a flourishing Kingdom to the most deplorable condition it now is in.

To the end that this Kingdome may not utterly be ruined, God incline their hearts to restore his Majesty, and for their own and their Posterities sake to receive from his Majesty an Act of Oblivion, a generall Pardon, assurance for the Arrears of the Souldierie, and meet satisfaction for tender Consciences.

DAVID JENKINS,



*Indge*



*Judge Jenkin's*

Remonstrance  
TO THE  
L O R D S

AND  
C O M M O N S  
OF

The two H O U S E S of  
PARLIAMENT at  
*WESTMINSTER*

the 21. of *February* 1647.

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By *DAVID JENKINS*  
Prisoner in *Newgate*.

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Printed in the *Yeare* 1648.

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*Fudge Fenkin's*  
REMONSTRANCE  
TO THE  
LORDS and COMMONS  
AT  
WESTMINSTER

**I** Desire that the Lords and Commons of the two Houses, would be pleased to rememoer, and that all the good people of *England* do take notice of an Order of the House of Commons this Session, for publishing the Lord Cook his Bookes: which Order they may find printed in the last Lease of the second part of his Institutes, in these words  
viz.

Die

Die Mercurii 12. May 1641.

**V**Pen Debate this Day in the Commons House of Parliament, the said House did then desire & held it fit, that the heir of Sir Edward Cooke should publish in print the commentary upon *Magna Charta*, the pleas of the Crown, and the jurisdiction of Courts, according to the intention of the said Sir Edward Cooke, and that none but the Heir of the said Sir Edward Cooke, or he that shall be authorized by him, do presume to publish in print any of the foresaid Bookes, or any Copy thereof.

H. Elsyng Cler.

Dom. Com:

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And I do further desire them that they would reade and peruse M. Solicitor Saint-Iohn, and M. John Pym, their Bookes, published likewise this Session, Whose Titles are as followeth



(194)

*An Argument of Law concerning the  
Bill of Attainder of High Treason of  
Thomas Earle of Strafford.*

*At a Conference in the Committee of  
both Houses of Parliament.*

*By M. Saint John his Majesties Soli-  
citor Generall.*

*Published by Order of the Commons  
House.*

*London, Printed by G. M. for Jo.  
Bartlet, At the Sign of the Guile Cup  
neare S. Austins gate in Pauls Church  
yard. 1641.*

*And the Speech or Declaration of John  
Pym Esquire.*

*After the Recapitulation or Summe-  
ning up of the charge of High Treason  
against Thomas Earle of Strafford, 12  
Aprill. 1641.*

*Published by the order of the Commons  
House.*

*London Printed for John Bartlet,  
1641.*

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1 Nothing

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1. **N**othing is delivered for Law in my Books but what the H. of Commons have avowed to be Law in Bookes of Law published by their command this Session, and agreeable to the Bookes of Law, and Statutes of this Realme in all former Times and Ages.

2. The supposed offence charged on me is against the two Houses, and none ought to be judges and parties, by the Law of this Land, in their owne case.

3. I desire the benefit of *Magna Charta*, the *Petition of rights*, & other good Lawes of this Land, which ordaine that all mens Tryals should be by the establisshed Lawes, and not otherwise: they are the very words of the petition of Right.

An Ordinance of both Houses is no Law of the Land, by their own confession; and by the Bookes of the Lord Cooke, published by their Order as aforesaid, this Session in six several places.

For Sedition; in my Books there is none, but such as they have authorised this Session, to be published & printed. To publish the Law is no sedition. These Positions following I doe set downe for the Law of the Land in my Bookes,

1 Part.col.  
of Ordinances, fol: 728  
2 Pars inst  
fol 47. 48  
157. 143  
4 par instit:  
23, 232, 298  
4 H, 7, 18

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books, and they themselves have justified, and avowed them as aforesaid, we agree the Law to be, and to have been in all times in all the particulars following, as here ensueth.

1. To imprison the King is high treason.

2. To remove Councillours from the King by force is High Treason.

3. To alter the established Lawes in any part by force is High Treason.

4. To usurp the Royall Power is High Treason.

5. To alter the Religion established is High Treason.

6. To raise rumours and give out words to alienate the peoples affections from the King, is High Treason.

7. To seize Souldiers upon the people of the Kingdoms without their consent, is High Treason.

8. The execution of paper orders by Souldiers in a military way, is high Treason.

9. To counterfeit the great Seale, is High Treason.

10. The Commission of Array is in force and none other.

11. None can make Judges, Justices, Sheriffs, &c. but the King; The King makes every Court.

12. The great Seale belongs to the Kings Custody, or to whom he shall appoint, and none other.

13. Ordi-

3 Part indit

pag. 12

M Solicitor

Pag. 12

3 part in

pag. 9

M Pym, p. 48

3 part indit

3 10, 12, 26

3 part indit

pag. 9

M Solicitor

p. 2, 10, 12

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pag. 23

4 part 4 indit

p. 125

Justice H

tons argu-

ment, fol. 9

39. 40

4 part indit

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artical

super char-

tas cap. 5

- 1 part. Coll. of Ordin & Cook utj supra.  
4 part: inst. 25.
13. Ordinances of one or both Houses are not lawes to binde the people.
14. No privilege of Parliament, holds for Treason, Felony, or breach of the Peace, nor for 20. Parliament-men forty, nor three hundred.
15. To subvert the fundamentall lawes is High Treason.
- 16 To levy War against the person of the King is High Treason.
17. To perswade Forreiners to levy war within this Kingdome is High Treason.
- 18 To impose unlawfull Taxes, or impose new Oathes, is High Treason.
19. The King can doe no wrong.
20. It is a pernicious Doctrine to teach Subjects, they may be discharged from the oath of Allegiance. Than what means the Doctrin of both Houses of the Votes 11 of Feb. 1647.
- 21 A necessity of a mans own making doth not excuse him. The requiring or forcing of the Militia, brought the necessity of arming upon the Houses.
22. None can levy war within this  
" realme without authority from the  
" King, for to him only it belongeth  
" to levy war, by the common law of  
" the land to doe otherwise is high  
" Treason by the said Common law  
The only quarrel was & is the Militia

M. Solicitor  
pag. 8. 76.

M. Solicitor  
pag. 13. 27.

M. Solicitor  
pag. 26.

M. Solicitor  
pag. 35.

M. Pym, p.  
8.

M. Pym, p.  
17.

M. Pym, p.  
24.

3-part. inst.  
pag. 9.

for which so much blood hath been  
spent, and Treasure.

23. No Parliament without the King,  
is Principium, caput & finis.

24. Presentments or tryall by Jury, is  
the bright-right of the Subject.

M. Solisior

70.71.

4-part. inst.

pag. 1. 3. 4.

4-part. in fl.

41. 356.

There is no doubt but that many in  
both Houses are free from this great  
sin, and that most of the prevailing  
party, had at first no intentions to pro-  
ceed so farre; but the madnesse of the  
People (who are very vastable, and so  
they will find them) and the successe  
of their Armes (having this great rich  
City to supply them, with all accomo-  
dations) have so elated them, that the  
evil is come to this height.

For my selfe, to put me to death in  
this cause, is the greatest honour I can  
possibly receive in this World: Dulce  
& decorum est mori pro patria. And for  
a Lawyer and a Judge of the Law, to  
die, dum sanctis patrie legibus obsequi-  
tur, for obedience to the Lawes;  
will be deemed by the good men of  
this Time a sweet smelling sacri-  
fice; and by this and future Times,  
that I dyed full of yeares, and had an  
honest and an honourable end; And  
posterity will take knowledge of these  
Men who put some to death for sub-  
verting of the Lawes, and others for  
supporting of them, &c.

709

Bracton l.  
c. 9. p. 107  
4 pars inst  
342, 343  
Stanford 99

Yet mercy is above all the Workes  
of God. *The King is Gods Viceroy on  
earth.* In Bracton, who was a Judge in  
Henry 3. time, you shall find the  
Kings oath; *To shew mercy is part of it.*  
You are all his children; say, and doe  
what you will, you are all his Subjects,  
and *He is your King and parent.* *Pro  
magna peccato paululum supplicii sa-  
tis est patri;* and therefore let not the  
prevailing party be obdurate, out of a  
desperation of safety: That which is  
past is not revocable; Take to your  
thoughts your parents, your wives, your  
children, your friends, your fortunes,  
your countrey; wherein Foreigners  
write there is *Miraculis suavis et  
rerum omnium abundantia.* Invite not  
them hither, the only way to be free of  
their company will be, *To restore his  
Majesty, and receive from Him an Act  
of Oblivion, a generall pardon, Assu-  
rance for the Armees of the Souldiers  
and most satisfaction to tender consci-  
ences.*

God preserve the King and the L. people.

DAVID JACKINS,  
Prisoner in New-gate:

F J N J S.

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